## INDEX

## Volume I

	PAGE
List of Relevant Docket Entries	
TWA Complaint [Doc. 1]	A-1
Order Referring This Action to Judge Metzner for All Purposes, dated August 31, 1961 [Doc. 42]	A-33
Opinion and Order of December 5, 1961 [Doc. 50]	A-35
Pretrial Order, February 7, 1962 [Doc. 59]	A-36
Toolco's Answer and Counterclaims [Doc. 63]	A-41
Halliday's Answer [Doc. 83]	A-99
Pretrial Order, July 12, 1962 [Doc. 101]	A-116
Pretrial Order, September 21, 1962 [Doc. 122]	A-118
Pretrial Order, January 10, 1963 [Doc. 144]	A-122
Pretrial Order, January 19, 1963 [Doc. 146]	A-127
22, 1963, Exhibit C to Bromley Affidavit dated February 15, 1963 [Doc. 179]	A-133
February 1, 1963 [Doc. 166]	
nett, dated February 1, 1963 [Doc. 167]	A-226
Pretrial Order, February 1, 1963 [Doc. 168]	A-253
Opinion and Order, February 7, 1963 [Doc. 173]	A-255
Toolco's Notice of Position, dated February 8, 1963 [Doc. 174]	A-268
Transcript of Pretrial Hearing, February 8, 1963 [Doc. 188]	A-270
Pranscript of Pretrial Hearing, May 2, 1963 [Doc. 204]	
A	A-309

	PAGE
Opinion and Order, dated May 3, 1963 [Doc. 191]	A-317
Opinion and Order of May 3, 1963 Granting Additional Defendants' Motion to Dismiss (memorandum endorsed on motion papers dated February 15, 1963) [Doc. 179B]	
Judgment of the Court of Appeals on Interlocutory Appeal, Entered July 10, 1964 [Docket No. 28405] [Doc. 478]	
Judgment of the Court of Appeals Affirming Dismissal of the Counterclaims, Entered July 10, 1964 [Docket No. 28406] [Doc. 479]	,
Opinion of the Court of Appeals in Dockets No. 28405 and No. 28406 [Doc. 478]	A-328
Opinion and Order of Special Master J. Lee Rankin, dated July 30, 1965 [Doc. 481]	A-357
Opinion and Order of Judge Metzner, dated November 16, 1965 [Doc. 487]	A-396
Transcript of Hearing Before Judge Metzner on December 30, 1965 [Doc. 498]	A-400
Opinion and Order of Judge Metzner Denying De- fendants' Motion for a Pre-Hearing Order, dated January 4, 1966 [Doc. 496]	A-422
Order by Judge Metzner of January 4, 1966 Designating Herbert Brownell as Special Master in Place of J. Lee Rankin [Doc. 497]	A-424
Volume II	
Excerpts from Testimony at Damage Hearing of Robert W. Rummel [Docs. 554-2 through 554-10]	A-425
Testimony at Damage Hearing of John B. Connelly	
[Doc. 554-11]	A-977

# A-iii

## Volume III

TAUE
Excerpts from Testimony at Damage Hearing of Edward J. Morehouse [Docs. 554-13, 554-14] A-1209
Excerpts from Testimony at Damage Hearing of Edward Wemple [Docs. 554-15 through 554-18, 554-32]
Excerpts from Testimony at Damage Hearing of John C. Biegler [Doc. 554-19]
Volume IV
Excerpts from Testimony at Damage Hearing of Gene M. Woodfin [Docs. 554-23, 554-24]
Excerpts from Testimony at Damage Hearing of Nathan S. Simat [Docs. 554-25, -26, -27, -28, -30, -31]
Excerpts from Testimony at Damage Hearing of L. John Eichner [Docs. 554-31, -32]
Testimony at Damage Hearing of Van Court M. Hare, Jr. [Doc. 554-32]
Excerpts from Pretrial Deposition of Robert W.  Rummel [Docs. 224, 225, 226]
Excerpts from Pretrial Deposition of Charles C. Tillinghast [Docs. 210 through 222]
Excerpts from Pretrial Deposition of Emmett O. Cocke [Docs. 228, 231, 233, 235]
Jones v. Uris Sales Corp.—Master's Report [not a part of the Record herein]
Volume V
Notice of Filing of Report of Special Master dated September 21, 1968 [Doc. 509]
Report of Special Master, Filed September 21, 1968  [Doc. 508]

	PAGE
Defendants' Objections to the Report of the Special Master, dated November 1, 1968 [Doc. 511]	A-1967
Opinion and Order, Filed December 23, 1969, Adopting and Confirming the Report of the Special Master [Doc. 519]	
Opinion and Order of April 13, 1970 Awarding Attorney's Fee and Costs [Doc. 530]	
Final Judgment Entered April 14, 1970 [Doc. 531]	A-2073
Volume VI	
Toolco's Notice of Motion to Dismiss TWA's Complaint, August 8, 1961 [Doc. 22]	A-2075
Order by Judge Herlands, dated August 14, 1961 [Doc. 25]	
Transcript of Pretrial Hearing Before Judge Metz- ner, September 6, 1961 [Doc. 47]	
Pretrial Order of Judge Metzner, September 7, 1961 [Doc. 44]	
Transcript of Pretrial Hearing Before Judge Metzner, October 2, 1961 [Doc. 48]	
Pretrial Order of Judge Metzner, December 18, 1961 [Doc. 354]	
Toolco's Notice of Motion Before Special Master J. Lee Rankin, February 15, 1962 [Doc. 66]	
Transcript of Pretrial Hearing Before Judge Metzner, February 23, 1962 [Doc. 79]	
Orders of Special Master J. Lee Rankin, April 17, 1962, contained in excerpts from transcript of deposition of Charles C. Tillinghast, Jr. [Doc. 217]	
Interrogatory Propounded by TWA to Toolco, May 4, 1962 [Doc. 89]	

Orders of the Court of Appeals, dated September 28, 1971, Denying Petitions for Rehearing and Rehearing in banc	PAGE 1-2799
Volume VII	
	PAGE
Excerpts from Transcript of Deposition of Charles C. Tillinghast, Jr. [Excerpts from Docs. 54, 210, 211, 216, 221]	-2800
Vol. 11 of Defendants' Exhibits to Deposition of Charles C. Tillinghast, Jr. (consisting of Ex- hibit 11, with subparts 11-A through 11-T, inclu- sive) [Doc. 238]	
Opinions and Orders of the Civil Aeronautics Board with respect to the Hughes Tool Company—TWA Control Relationship, as follows:	
(a) CAB Opinion and Order No. 3210, October 17, 1944 (officially reported at 6 C.A.B. 153) [not a part of the Record herein] A	-3297
(b) CAB Order No. 4437, January 26, 1946 A.	
(c) CAB Order No. E-922, October 29, 1947 A.	
<ul> <li>(d) CAB Opinion and Order No. E-1735, June</li> <li>30, 1948 (officially reported at 9 C.A.B.</li> <li>381) [not a part of the Record herein] A-</li> </ul>	3311
(e) CAB Opinion and Order No. E-4701, October 6, 1950 (officially reported at 12 C.A.B. 192) [not a part of the Record herein]	3333
(f) CAB Opinion and Order No. E-16195, December 29, 1960 (officially reported at 32 C.A.B. 1363)	3403

## Excerpts from Testimony at Damage Hearing of Robert W. Rummel

Tr. 1451 • • • The Special Master: Mr. Rummel, we received your affidavit into evidence and the plan is to commence cross-examination this morning after you are sworn.

Do you want to administer the oath?

ROBERT W. RUMMEL, called as a witness by defendants, being first duly sworn by the [Tr. 146] Notary Public (William Blitz), testified as follows:

Mr. Sonnett: Mr. Special Master, before we begin, there are a couple of minor corrections which we have noted, and I think it would be well to note now.

There is a typo on page 1 of the statement under the heading "Qualifications." The seventh line down reads "Since 1942." That should be "Since 1943."

On pages 9 and 17, on page 9 after that indented paragraph, the paragraph beginning "TWA did not receive the 63-plane fleet on March 5, 1959..." et cetera—that same reference is made on page—

Mr. Hayes: I am not sure that I get what this is. What is the change?

Mr. Sonnett: The date, I am going to give it to you on two pages at the same time. It is the same date.

March 5, 1959, that reference on page 9 and again on page 17, beginning at the second full paragraph, a reference to the same date.

As to that date, when the statement was prepared we believed we could establish that to be the precise date, but we are unable to do that with precision. Having explored it with the witness, we be- [Tr. 147] lieve in both cases instead of that date of March 5th, it should be early in 1959, which is the closest we could come to it.

The Special Master: Early in 1959?

Mr. Sonnett: Early in 1959.

The Special Master: Any objection?

Mr. Hayes: I would like an inquiry as to what "early in 1959" means? Does that mean January or February or April or May or March, or what does it mean?

Mr. Sonnett: You can-

Mr. Hayes: We had great precision here before. It was sworn to by the witness. Now, we find that precision has disappeared. What does "early" mean? I don't know what it means.

Mr. Sonnett: I think whenever you get around to it or if you want to do it, if you want to ask the witness, he will tell you.

The Special Master: I suggest we make the change.

Mr. Hayes: I object to the change. This is a sworn statement that has been submitted and admitted in evidence by Mr. Special Master. I object to the change now.

Tr. 1481 The Special Master: I will overrule the objection. We will make the change and it will be subject, of course, to cross-examination.

Mr. Hayes: I have stated my objection.

I can't help but comment, after all of the years of preparation that the plaintiff has had, we are met, a month or more after the statement has been submitted, with a change of this character.

Mr. Sonnett: Our aim is accuracy always, Counsel. We will continue to make corrections in the interests of the truth, as long as we have to.

The Special Master: Start the cross-examination.

Mr. Hayes: We understand, of course, that it is not necessary to take exceptions to any of your rulings.

The Special Master: I think that's a perfectly proper statement.

Mr. Hayes: We have various objections that were made, Mr. Special Master, and there have been no rulings on them.

The Special Master: No, I am going to defer the ruling at least until after the cross-examination of Mr. Rummel.

Tr. 2151 • • • A. Broadly, yes, I think so.

- Q. Is broadly supposed to limit it? In your answer you said "broadly, yes." If there is any limitation I want to know what the limitation is.
- A. No, I would certainly call it engineering in its broad application.
- Q. You stayed with Commonwealth until you went with
  - A. Yes.
- Q. June 21, 1943. You said you were senior engineer. What did that mean. Mr. Rummel?
  - A. That was the job classification.
- Q. Were there other senior engineers?

- A. Yes.
- Q. How many?
- A. I don't know. Relatively few, but I don't know how many.
  - Q. Did you have superiors there!
  - A. Certainly.
  - Q. Who was your superior?
  - A. The vice president of engineering.
  - Q. Was there a chief engineer at TWA at the time?
  - A. Yes.

ITr. 2161 Q. Was he a superior of yours, too?

- A. No.
- Q. He was not?
- A. No.
- Q. Can you describe how the echelon operated?
- A. Well, the chief engineer is in charge of all of the other engineering except mine. I reported to the vice president.
- Q. Of what kind of engineering was the chief engineer in charge?
- A. Airline maintenance engineering, plus the war contracts that TWA had at that time.
  - Q. What kind of war contracts were those?
- A. Oh, we had one relating to power plant fuels. I was indirectly concerned with that.
  - Q. As senior engineer, what were your duties?
  - A. As I say, the senior engineer is a job classification.
  - Q. Right.
- A. My duties consisted in—consisted primarily of apprising management of future fleet possibilities, forecasting the relative worth and exploring airplane conversion possibilities, that is, looking at war production to see if they potentially could be made into reasonable [Tr. 217] transport aircraft, economic characteristics and so on.

- Q. By future fleet possibilities, do you mean anything more than the possibility of converting warplanes into transport planes for commercial use?
  - A. Yes.
  - Q. What do you mean beyond that?
- A. Well, it included such things as looking at new airplanes as well.
  - Q. What new airplanes were there to look at in 1943†
- A. Well, the post war Constellation was at least a gleam in the eyes at that time, and certainly some work was being done. The Budd Conestoga was a warplane, the Curtiss-Wright CW-20 which was the intended commercial version of the C-46, that one was eligible either for conversion or new production, and that was true in some of the other cases. That's all that comes to mind.
- Q. You mentioned that the post war Constellation was a gleam in the eye at the time.

Was Lockheed at that time making warplanes?

- A. Yes.
- Q. Was the gleam the hope that the warplane could be converted or not?
- A. Part of it.
  - Q. In part it was!

ITr. 2181 A. Well, I can tell you that Lockheed was more interested in selling new airplanes than in converting them.

- Q. Was your job the evaluation from an engineering standpoint of the possibility of converting warplanes or of looking at any possible new planes that might be on the market post war?
  - A. Engineering and economic.
- Q. By economics again do you mean the cost analysis of the operation of the airplane?
- A. Well-

- Q. Or do you mean something other than that? I am not sure. That's the way you defined it before.
- A. That's an important part of the economic considerations and it certainly included that.
  - Q. Did it include anything else!
- A. Well, practicality of application of the planes to the routes in terms of payload range and that effect on operating costs.

None of these things meant much without being related to potential revenues.

Broadly, as I said, it was—the charge was to keep management apprised of how they should look and what the primary directions should be that they should move in [Tr. 219] later with respect to fleet acquisitions.

- Q. Did you render reports to management?
  - A. Yes.
  - Q. To whom in management did you render the reports!
- A. Well, my boss was J. C. Franklin, vice president of engineering. Reports went to him and to others in top management.
  - Q. Did they consult with you and you consult with them!
  - A. There was a great deal of work back and forth, yes.

[Tr. 229] The Special Master: Does that include the number of planes, as well as the type and size of plane?

The Witness: Yes, sir, it does. And the number of planes might vary with the type, size, application of the planes.

## By Mr. Hayes:

Q. Back in 1943 and until 1956 when you became vice president—engineering, you were dealing entirely, were you not, with piston planes?

Mr. Sonnett: Excuse me a minute.

A. I am not clear on that.

Mr. Sonnett: Excuse me. I may have misheard. Would you read that back?

(The question was read.)

A. No.

Q. Pardon me. I slipped. Until 1955, you were dealing entirely, were you not, with piston type planes?

A. No.

Q. When did you first depart from dealing with piston type planes?

A. I assume by "dealing", you mean considering; is that correct?

Q. I mean planning. What you talk about is fleet ITr. 2301 planning. Whatever you meant by fleet planning, Mr. Rummel.

A. We gave technical consideration which usually is a prelude to specific fleet planning to jet airplanes from approximately 1956—19—excuse me 1946 onward.

Q. Did you plan to acquire any of those planes?

A. Well, we gave consideration from time to time to the acquisition of jets, yes.

Q. Did you recommend any acquisitions of jet airplanes prior to 1955?

A. No.

Q. So I will confine my question to the period up to 1955.
Up to that time, you had made no recommendations as to the acquisition of jet airplanes; is that correct?

A. I want to be sure we are entirely clear, because—

- Q. So do I.
- A. (continuing)—it's a case where a categorical answ could be perhaps a bit misleading.
  - Q. Let us not do that.
- A. Well, that's why I am taking the time. But at a point, as I testified in the earlier proceeding, we certain gave very serious consideration to moving into jet develorments, to the extent that we gave it serious consid-ITr. 23 eration which I distinguish from a specific recommendation to finally procure, sign a contract. So in terms of specific of procurement, the answer would be no.
- Q. Do I understand your testimony to mean that who you talked about being in charge of new aircraft studies at future fleet planning, you were not talking there in you statement about recommendations? You were talking merely about investigations or inquiries or research, you might make as to planes as to which you might never make a recommendation for acquisition?
  - A. Well-
  - Q. Is that correct or not?
  - A. Not really, no. It is an over-simplification.
  - Q. Tell me what is right.
- A. Throughout this period, various recommendation were made to management as to what management should seriously be interested in and what it should not be interested in, including various appraisals of various possibilities of fleet acquisitions.
- Q. I am speaking of recommendations by you and you staff to acquire planes. I think you have testified that price to 1955 you did not recommend the acquisition of any jet
  - A. Yes, and I said I would clarify that.
- ITr. 2321 Q. Take your time. Clarify it, Mr. Rumme because it is not clear to me. I am sorry.

A. Well, I will certainly try to be just as clear as I know how. Perhaps I am drawing too fine a line here.

What I am saying is that from 1946 onward, we considered all sorts of jet possibilities and actively explored them from time to time, both in TWA and on occasion with Mr. Hughes' participation.

As to a specific recommendation that we, in fact, procure during that early phase, while we gave it serious consideration, we concluded in every case that I could think that we would not, in fact, procure.

Q. But that falls—that activity of yours—I will put it in the form of a question.

Does that activity—that consideration given to possibilities fall within what you stated that your duties were, to wit, future fleet planning?

- A. Yes, I think so.
- Q. It does?
- A. Yes.
- Q. That is what I wanted to get clear.

So future fleet planning entailed more than merely leading to recommendations for acquisition of planes? It included also studies of possibilities, though you might ITr. 2331 never make a recommendation for acquisition?

- A. Well, we usually studied before we recommended.
- Q. What I am trying to get clear, Mr. Rummel, is whether by future fleet planning you meant studies which eventuated in a recommendation to acquire or you meant all studies whether they eventuated in a recommendation for acquisition or not?
- A. Well, all studies, because—when we began some of these things, I couldn't tell what I'd finally come out with.

ITr. 2741 • • • Q. In connection with your future fleet planning, would you and your group make recommendations or studies rather—I withdraw the recommendations—as to the effect of increasing the number of flights between different points or decreasing them?

A. Well, not in detail usually, no.

[Tr. 275] Q. Did you assume that the existing schedules would be maintained?

A. Oh, no.

Q. What did you assume in making your studies?

A. We'd assume that the industry would grow and that we would grow with it if we had the equipment to grow with it. It was a case of trying to come in with an appropriate premise as to type and number of equipment.

Q. Would anybody make recommendations as to whether there should be increases as to the number of flights between

points?

A. I'm quite sure they did and I suspect that most of that came from the traffic function.

Q. Mr. Fellows or some other such group under Mr. Cocke?

A. Yes.

Q. You did not generate those recommendations?

A. No, although we pointed out—I pointed out areas of service that I thought new airplane designs could provide as a function of their characteristics.

Q. Recommendations for increases in frequency, more flights between points, might necessitate additional aircraft, might it not?

A. Yes.

[Tr. 276] Q. Did you consider what the reaction of competitors on those routes might be if TWA increased its frequencies?

- A. Yes, broadly speaking we would try to take that into
- Q. What do you mean by "broadly speaking we might try to take it into account"?
- A. Broadly speaking we would try to take it into account. I mean, that broadly speaking we'd assume that if we provided service to the point where they needed to be defensive, that they probably in the end would be defensive.
- Q. By defensive, do you mean that they would increase their frequencies as well?
  - A. Yes.
  - Q. Is that what you mean?
  - A. Yes.
- Q. Did you have anything to do with developing the financial side of the cost of acquiring aircraft, the net profit results and so on and making recommendations based on the financing?
  - A. On the finance?
  - Q. Yes.
  - A. No, sir.
  - Q. That was outside your function?
  - [Tr. 277] A. Yes, sir.
  - Q. You had nothing to do with that?
  - A. That's right.
- Q. It was Mr. Martin's suggestion to me that it might have been Mr. Hobbs who made the revenue projections in Mr. Leslie's department. Does that mean anything to you?
- A. Well, I knew a Mr. Hobbs, but I don't recall the situation clearly enough to testify that he did or did not do the revenue projections.

- Q. Up to the time you were elected vice president—engineering, on March 24, 1956, Mr. Rummel, to whom had you reported as chief engineer?
  - A. To John A. Collings.
  - Q. How long had you been reporting to Mr. Collings!
  - A. From the time Mr. Koepnick left.
  - Q. Would you spell Mr. Koepnick's name?
  - A. K-o-e-p-n-i-c-k.
  - Q. When was that?

Tr. 2781 A. Well, when I became—let's see. I became chief engineer when Mr. Koepnick left the company.

- Q. That was in August 1949?
- A. Yes.
- Q. Is that the time that Mr. Collings came in?
- A. Oh, no, he had been there. That's the time I reported to Mr. Collings.
- Q. That is what I should have asked. I am sorry, Mr. Bummel.
  - A. Yes.
  - Q. What was Mr. Collings' position?
- A. Initially, vice president of operations. Later, executive vice president.
- Q. Was he executive vice president or vice president—operations when you became vice president—engineering?
  - A. Operations.
  - Q. When did he become executive vice president?
  - A. I don't exactly recall at this moment.
- Q. Who was president—I have now left the period ending December 31, 1954—up to January 1956, do you recall?
  - A. From the time I joined the company you mean!
  - Q. No, going back. It was Mr. Damon, wasn't it?
  - A. Yes.

Tr. 2791 Q. How long had he been president?

- A. He was president, as I recall it, about five years.
- Q. There was an interregnum after Mr. Damon's death until Mr. Burgess became president, was there not?
  - A. Yes.
  - Q. For about a year?
  - A. About.
- Q. Who was the top executive in the company during that period?
  - A. Mr. Collings.
- Q. Was there a managing operating committee?
- A. I believe there was for a while. Mr. Pierson, Mr. Collings, I believe Mr. Leslie.
- Q. Mr. Cocke?
- A. I think so. There were a number of these committees from time to time and I am not entirely sure who was on that particular one, but I believe it was those four.

I believe Harry Rogers of the Toolco during an interval before Burgess became president headed up the management operating committee, if I recall correctly.

- Q. Was Mr. Pierson chairman throughout the whole period?
- [Tr. 280] A. I can't say.
  - Q. You don't remember?
  - A. I did at the time certainly, but I just don't recall.
  - Q. You have no present recollection?
  - A. No.
- Q. Mr. Burgess became president somewhere early in 1957, did he not?
  - A. Yes.
  - Q. Shortly thereafter, did Mr. Collings leave!
  - A. Yes.

- Q. Whom did you report to when you were then vice president of engineering after Mr. Burgess became president?
  - A. Mr. Burgess.
  - Q. He left the company a year or so later, did he not!
  - A. Just approximately a year later, yes.
  - Q. Then Mr. Thomas became president in mid-1958.
  - A. There was an interval when we had no president.
  - Q. That's right.
  - A. Yes, it is true that Thomas was the next president.
- Q. To whom did you report in the interval between [Tr. 281] Mr. Burgess and Mr. Thomas?
  - A. Another committee.
- Q. Who were the members of that committee, do you remember?
- A. I'm quite sure Mr. Pierson chaired the committee and I believe it consisted of Cocke and Leslie and Pierson.
- Q. After Mr. Thomas became president, to whom did you report?
  - A. Mr. Thomas.
- Q. I forgot to ask you this: After you became vice president—engineering, did you still carry on the same duties that you described with respect to new aircraft studies and future fleet planning?
  - A. Yes.
  - Q. How long did you continue those duties?
  - A. I still am.
  - Q. Same duties?
  - A. Well, plus some more.
  - Q. But you still have those duties?
  - A. Yes.
- Q. You state that in 1958 you became chairman of the TWA Jet Planning Committee.

What was the Jet Planning Committee?

Tr. 2821 A. Well, it was a committee whose charge was to prepare the airline for the implementation of jets by planning activities that needed to be undertaken to make ready for the jets.

- Q. When was the Jet Planning Committee organized?
- A. I believe the idea of the Jet Planning Committee resulted in organization action in 1957 some time.
  - Q. Who set it up?
- A. Management.
  - Q. Who in management?

A. As I recall it, Mr. Collings set it up. Well, now, let me think. I'm not clear whether Collings—well, let me—yes, Collings was still there. It might have been the fall of 1956 or thereabouts.

And he set up a jet planning study group which led to the committee. I assume that Mr. Collings discussed it with his associates, but I believe that he was the one that initially set it up.

[Tr. 305] • • • Q. At the same time that you were chairman of this Jet Planning Committee—that is the name, is it not?

- A. Yes, sir.
- Q. —you were also supervising the contracts at Boeing and at Convair, is that correct?
- A. Well, I was supervising those parts of the contracts over which I had jurisdiction, yes.
- Q. You said that you were employed by the Hughes Tool Company as a consultant and special representative in connection with the acquisition of jet aircraft from Boeing and General Dynamics, the acquisition of engines from Pratt & Whitney and General Electric. I had authority to commit funds under Toolco's contracts. The Toolco factory representatives of Boeing and Convair reported to me as

special representative of Toolco responsible for the technical administration of the Toolco contracts with such manufacturers.

## A. Yes.

Mr. Sonnett: I am sure that counsel's failure to read one sentence intervening there was inadvertent.

Mr. Hayes: It was not inadvertent, Mr. Sonnett. Let me conduct my own cross-examination. It has nothing to do with the question I am going to pose to [Tr. 306] the witness.

Mr. Sonnett: The fact that he reported directly to Howard Hughes has nothing to do with this examination?

Mr. Hayes: It has nothing to do with this examination.

Mr. Sonnett: You neglected to read that.

Mr. Hayes: I did neglect to read it very deliberately. I wish you not interrupt. I am reading those parts of the statement that have to do with the question I wish to address.

Mr. Sonnett: Then I might indicate that you are not reading at all. The witness was not looking at it and you were purporting to read. In fairness to the witness, let him read it.

Mr. Hayes: I am sick and tired of these charges of unfairness and everything else. And I promise you, Mr. Special Master, I will control my Irish temper in the future regardless of—

The Special Master: I have an Irish grandmother, too. So let's all do it.

Mr. Hayes: I only wish another Irishman would exercise similar control.

Mr. Sonnett: I had an Irish mother and French [Tr. 307] father and you can make what you like out of that.

The Special Master: I can see we are in for trouble all around here.

Q. Just what was your authority in connection with the position as special representative of Hughes Tool Company and as consultant?

A. My specific authority in covering the Boeing, Convair, General Electric, Pratt & Whitney contracts amounted to—totaled as I recall it now, approximately 19 or 20 million dollars. That is, I could authorize change orders involving the technical configuration of the plane and the engines in amounts not to exceed that in aggregate. That was divided between these four different projects.

I was authorized to agree to and sign changes to the contract, I believe, in all areas excepting those relating to airplane delivery and things like progress payments. I had no authority to disburse funds.

And additionally, I had through the plant representatives surveillance of the aircraft during their course of construction.

Additionally, through them, I was responsible for accepting the airplanes, technically, when tendered for delivery.

ITr. 3081 And additionally, I was responsible for the detailed configuration of the planes to the extent that they would be configured in detail to our requirements.

- Q. To whose requirements?
- A. TWA's.
- Q. These planes you are talking about now are the 30 onvairs, the eighteen 331s and the fifteen 131s?
- A. Plus the spare engines.

- Q. The spare engines from Pratt & Whitney and General Electric?
  - A. Yes, sir.
- Q. You mentioned four projects. I do not know what you mean. I mean Boeing—
  - A. I really should have said four manufacturers.
- Q. These were all planes ordered for TWA's eventual use?
  - A. Well, that seemed to be the general belief at the time.
  - Q. So far as you knew they were?
  - A. Yes, I thought they were.
- Q. You said you had authority to spend what was it, 19 million dollars?
  - A. That's the number I recall.
- Q. Was this one grant of authority whereby you were [Tr. 309] authorized to—
- A. No, as I indicated, this was divided between the various projects.
- Q. How was it divided if you would tell us, please? Or is the \$19 million the amount of the change orders that you did sign?
  - A. No, I did not use all of it.
  - Q. Would you please explain how this comes about?
- A. Well, it came about, I guess, primarily because I felt there should be specific limits attached to my authority.

And in consultation with these people-

- Q. With who!
- A. The Hughes Tool people.
- Q. Who?
- A. Oh, I believe—I believe Ray Cook was involved at times, I think Chuck Price, and quite possibly, I don't specifically recall this, possibly Ray Holliday.

I think it was primarily those two. I had recommended that limits be established and that it be done formally.

Q. When was this conversation or these conversations? A. This was after it became clear from Hughes that I was to administer this work.

[Tr. 310] This would have been relatively shortly after the contracts were signed.

- Q. When you say from Hughes, you mean Mr. Howard Hughes?
  - A. Yes.
  - Q. You don't mean Hughes Tool Company!
  - A. I mean Mr. Howard Hughes.
- Q. Let us keep these things clear.
- A. I will try. Mr. Howard Hughes.

This was finally done through an exchange of correspondence between the Hughes Tool Company and my boss, Mr. Collings. They requested that I so act and he acquiesced in a letter and the limits thereby became established.

- Q. What were the limits?
- A. Well, very honestly I don't remember exactly how they were broken down.

I can give you my impression of what they were.

Q. Give me your best recollection, please.

A. Well, I think it was—the amount—it was on the basis of so many dollars per JT-3 and so many dollars per JT-4, so many dollars per GE engine and so many dollars for each of the planes in terms of authority to commit funds.

[Tr. 311] It is these limits in detail that I don't remem-

ber at the moment, but this is how it worked.

Additionally, I had proposed a limit per change whichif, which exceeded, would require—that is per airplane change. I don't recall that this applied to the engines. A dollar limit per change which, if exceeded, would require the consent, approval of the Hughes Tool Company.

And as I say at the time I didn't think that a completely open ended thing was really what I should have.

With specific limits, if I worked within the limits, then obviously I'd be within known limits. This is what I wanted and that's why I recommended that be set up.

Q. What is the JT-3 you mentioned?

- A. That is the engine that powers the 131 type airplane. It is a Pratt & Whitney engine.
  - Q. Boeing 1317
  - A. Yes, sir.
  - Q. Is that a long range engine?
- A. Well, the plane was good for transcontinental service. It was not particularly good or optimum for international service.
- Q. Could it fly non-stop New York-Paris, the JT-3? Tr. 3121 A. Depending—it could, yes, depending on conditions.
  - Q. You mean if it had a good tail wind?
- A. Well, if meteorological conditions were favorable, then it could fly.
  - Q. Could it fly west reliably?
  - A. Not reliably.
- Q. It would need to stop for refueling if flying west, is that correct?
- A. Well, by reliability, I would interpret you mean scheduling reliability, that is completing sufficiently frequently.
  - Q. Certainly.
  - A. The answer would be yes.
  - Q. What is the JT-4?
- A. That is the Pratt & Whitney engine that powers the Boeing 331 type airplane.
  - Q. That is a more long range engine?
- A. Well, the plane is a long range plane. The engine is neither long nor short.

Q. But I mean it gives the plane the ability to fly long range!

A. Yes, sir. Well, it, in combination with the plane, provide that ability. It is a different plane.

[Tr. 313] Q. The 131s use the JT-3 engines?

A. Yes, sir.

- Q. The 331s used JT-4 engines?
- A. Yes, sir.
- Q. What plane used the GE engines?
- A. The Convair 880.
- Q. That is General Electric, GE, is it not?
- A. Yes, sir.
- Q. Do you recall now what the limits were of your authority with respect to changes, change orders with respect to any one of those three engines?

A. No, actually I don't. It was that amount which I thought was sufficient to cover them, but I don't remember at the moment.

Q. Do you recall the limits of your authority with respect to change orders to the Boeing 131s?

A. No, the number that comes to mind is something like \$50,000 a plane, but I can't really be sure of that now.

Q. You mean per plane, you mean per each of the 15 planes?

A. Yes. I say, I am not completely sure.

Q. Do you recall your authority with respect to the Boeing 331s?

ITr. 3141 A. Not exactly, no.

Q. Do you recall what authority you had with respect to the Convair 880s?

A. No, but now that I think a little bit, I'm not sure that the plane wasn't more like 150,000. I'm really not that positive at the moment. No, I don't remember.

Q. You mentioned that up to a certain amount per plane you had complete authority, and per engine you had complete authority and could sign change orders.

A. Within the framework of the definitions as applica-

ble to each project, yes.

- Q. But if you went beyond that state of authority you would need the consent of the Hughes Tool Company?
  - A. Per change.
  - Q. Per change?
  - A. Yes.
- Q. Were there occasions when you needed the consent of the Hughes Tool Company?
  - A. Yes.

(Tr. 315) Q. Would you care to tell us what those occasions were?

A. Well, one was the installation of wing leading edge devices on the Convair 880.

Q. Would you describe what a leading edge device is, Mr. Rummel†

- A. Well, these particular devices were slats.
- Q. Just slats?
- A. Slats. There may have been some changes in the flap linkage, but as I recall it it was installation of slats.
  - Q. Where were they installed?
  - A. Where!
  - Q. Yes.
  - A. On the wing leading edge.
  - Q. You mean the front edge of the wing?
- A. Yes, sir. I'm sorry, the front edge. We call it the leading—the thing that enters first.
  - Q. Did the Tool Company give consent or did they not?
  - A. They did not.

Q. How much of the cost was that to be?

A. Well, it has been a long time. I think that it was around \$30,000 a plane, but I'm really—I wouldn't ITr. 3161 want to testify that's what it was. That's a number that seems to come to mind.

But it probably is on that order. Maybe 30 to 40. I'm not that sure.

- Q. What was the purpose of making that change so far as you were concerned?
- A. To improve the low speed handling characteristics of the plane.
- Q. Were any Convair 880s manufactured with leading edge devices ?
  - A. Yes.
  - Which ones! Q.
  - A. The 880Ms.
  - Q. No, I am talking about the 880s.
  - A. Oh, no, sir.
  - Q. The Delta planes did not have leading edge devices?
  - A. They did not.
- Q. Were there any other 880s that did have leading edge devices?
  - A. Yes, the 880Ms.
  - Q. No, 880s, not 880ms, just 880s.
- A. Well, I don't know of any 880s other than one of the experimental 880s which was the investigation and Tr. 3171 development vehicle for leading edge slats and for a while it had them on. But I don't know of any 880 faally certificated and delivered with such devices.
  - Q. That's right. That's what I wanted to know.

How much time did you spend during the manufacture of the Boeing aircraft at the Boeing plant?

- A. Oh. just occasional trips.
- Q. How often?

A. I don't know.

When there was some particular purpose for being there, I would think—well, in the early stages more than in the later stages of construction, although at the final stages when the airplanes were initially nearing completion, I was there more often again.

- Q. You had a factory representative there, did you not?
- A. Yes.
- Q. On whose payroll was the factory representative!
- A. TWA's.
- Q. Who was the factory representative at Boeing!
- A. Ed Zak.
- Q. What were his duties?
- A. His duties were to insure that the plane complied with the procurement specifications, to watch design details [Tr. 318] in order to make sure that designs were optimized to our requirements, keeping in mind now, if you will—
  - A. By "our" do you mean TWA?
  - A. TWA's.
- —TWA's requirements automatically were the Hughes Tool's requirements. That was part of the basic charge that I had.

So, Ed's job was to insure that the airplane detail was good even in areas not embraced categorically by the specifications. There are many things that a spec cannot cover in detail.

So through his inspection for us, through inspection of mockups, through bringing their experts in, you would insure better that the airplane in fact would be a good airplane and a desirable airplane for TWA services

Additionally, he was responsible for conducting acceptance inspection, including the flight test of the vehicle from the customer's point of view.

He then on signal would effect-

Q. On signal from whom?

A. Well, he then on signal would effect delivery of the sirplane, and the signal would either come through me or directly from either Mr. Hughes or Hughes Tool [Tr. 319] representatives to him.

Q. What representatives?

A. Well, I'm-I said either one. I know there are-from Ed there were conversations between Mr. Hughes and Mr. Zak on occasion.

My clearance—that is, I wasn't authorized to accept deliveries. And the deliveries would be effected on word either from Mr. Hughes or through his West Coast office-

Q. You mean Tool Company's West Coast office?

A. Well, no, through Bill Gay's office.

Q. He was an officer of Hughes Tool Company, was he not?

A. He wasn't then, I don't believe.

Q. Are you sure?

A. Well. I say I don't believe he was then, no. No, I'm not that sure, but I don't think so. Not in-

Q. You don't know who employed him at the time from your own knowledge?

A. What, Mr .-

Q. Mr. William Gay?

A. Hughes.

Q. Was it Mr. Hughes or Hughes Tool Company or don't you know?

[Tr. 320] A. If you are asking me who signed his paychecks, I don't know that,

Q. That's what I That's what I am asking you.

Q. You don't know?

I know he reported—he did much work direct for Mr. Hughes.

- Q. Pardon!
- A. He did work, much work direct for Mr. Hughes and reported Mr. Hughes' views and confirmations when it was appropriate for him to do so.
- Q. You really don't know who his employer was, do you?
- A. I don't know categorically if it was Hughes Tool or Mr. Hughes. I would assume if I had to assume which you are not asking me to do it was Hughes Tool.
  - Q. I didn't ask you to assume.
  - A. I know. I'm sorry.
- Q. The only reason I asked you these questions is that you spoke of him like Mr. Hughes' personal employee.
  - A. Well, he, for practical purposes, I think he was.
  - [Tr. 321] Q. But you don't know?
  - A. I don't know who signed his checks, no.
  - Q. All right. Carry on.

What was this signal that had been given? You said that you had no authority to accept deliveries.

- A. No.
- Q. You mentioned a signal. What signal had to be given?
- A. Well, the signal was word to go ahead.
  - Q. Go ahead and so?
  - A. Accept delivery.
  - Q. To whom did Mr. Zak report?
  - A. To Mr. Rourke.
  - Q. Mr. Rourke was one of your men, was he not?
  - A. Mr. Rourke reported to me.
- Q. Was Mr. Zak on the payroll of the Hughes Tool
  - A. No.
  - Q. You were, were you not, Mr. Rummel?
  - A. Yes.

- Q. Part of your compensation was received from Hughes Tool Company and part from TWA during this period?
  - A. That is correct, yes.
  - Q. Your superiors at TWA were aware of this?
  - ITr. 3221 A. Certainly.
- Q. But Mr. Zak was never on the Hughes Tool Company payroll?
  - A. Not to my knowledge.
  - Q. He reported to Mr. Rourke, you said?
  - A. Yes.
  - Q. Did he report to you directly as a matter of routine?
- A. No, he reported to Mr. Rourke.
- Q. Let me direct your attention, Mr. Rummel, to page 3 of your statement.

Before I do, let me ask you if there was any factory representative there other than Mr. Zak at Boeing.

- A. Well, Mr. Zak was the man in charge of that office. There were other representatives there.
  - Q. Who were they?
- A. Well, Mr. Guy joined Mr. Zak during the course of the execution of the contracts.
  - Q. Was he a TWA employee?
  - A. Yes.
  - Q. To whom did he report?
  - A. Mr. Zak.
  - Mr. Zak had a secretary.
  - Q. TWA employee?
  - ITr. 3231 A. Yes, they were all TWA employees.
- Q. Did the Toolco have any factory representative at Boeing?
  - A. I don't know. Not as such. Not to my knowledge.
- Q. How about Convair, did you have a factory repre-
  - A. Yes.

- Q. Who was the factory representative there?
- A. William Bew.
- Q. Was he a TWA employee
- A. Yes.
- Q. Did he receive any compensation from the Tool Company?
  - A. Not to my knowledge.
  - Q. To whom did he report?
  - A. To Mr. Rourke.
- Q. Did the Tool Company have any factory representative at Convair?
- A. Well, there were Tool Company people stationed at Convair from time to time.
  - Q. Factory representatives?
  - A. Well, I'm not-I wasn't sure what they were doing.
- Q. Did they do the work that a factory representative ITr. 3241 does during the construction of an airplane.
- A. Like I say, I'm not—I don't know exactly what they did.
  - Q. You mean you were not there?
  - A. Pardon?
  - Q. You were not there?
  - A. Not at all times.
- Q. When you were there, did they do any of the work that a factory representative would be expected to do?

Mr. Sonnett: Wouldn't it be easier to ask him what they did do? I don't think it has been defined yet as to what counsel means by a factory representative, what his customary duties are.

Mr. Hayes: He has already told us what a customer factory representative does. He described it in detail with Mr. Zak.

Mr. Sonnett: You have not asked him yet what these Tool Company people—

Mr. Hayes: May I conduct my own examination, please?

Mr. Sonnett: You may, but you can go a little faster if you will give the witness some definition.

Mr. Hayes: I will decide on the speed too, ITr. 3251 if you don't mind.

Mr. Sonnett: You won't decide that alone. I think you are going to have a little help from the Special Master on that subject.

The Special Master: What was the question? (The question was read.)

- A. My answer was that I don't know what all they did.
- Q. Your answer is you don't know?
- A. Yes.
- Q. I direct your attention, as I started to say, Mr. Rummel, to page 3 of your statement, the sentence beginning three lines from the bottom, "I had authority to commit funds under Toolco contracts and the Toolco factory representatives at Boeing and Convair reported to me as special representative of Toolco."
  - A. That's right.
- Q. How do you reconcile that with the testimony you have just given? Who are these factory representatives you are talking about in your statement?
  - A. Well-
  - Q. Are they Zak and Bew?
  - A. Yes, they are.
- Q. You just testified they were TWA people and they ITr. 3261 reported to Rourke.
  - A. That's right.
  - Q. Who was not a factory representative, was he?
  - A. No, that's right.

Q. How do you reconcile the statements, Mr. Rummel? A. Very simple. The contracts are between the Hughes Tool Company and Boeing and the Hughes Tool Company and Convair. Hughes appointed me his representative to implement the parts of the contract that I described. The specific monetary charges were set up between Tool Company and TWA with the understanding that TWA would, and this is in the exchange of correspondence between the companies would configure the airplanes to TWA's requirements and that in expectation the theory was in expectation of our receiving the airplanes the cost would not be accrued or paid by the Tool Company only to be handed back later. We just went on the basis of TWA paying them as being the simpler procedure.

Q. The fact of the matter is, is it not, that Zak and Bew did not report to you, they reported to Rourke?

A. Rourke reported to me.

Q. To whom did they report? You testified Rourke, did you not?

[Tr. 327] A. They reported directly to Rourke and Rourke reported to me.

Q. You did not say that in your statement, did you?

Mr. Sonnett: If that is a question, I object to it. Mr. Hayes: I think it is a perfectly proper question, Mr. Special Master.

The Special Master: He said that in response to your question today.

Mr. Hayes: I am sorry.

The Special Master: He said that in response to your question today.

Mr. Hayes: Correct.

- A. Well, the only authority that they could have had as Tool Company representatives was an extension of my authority through Rourke to them.
- Q. Aren't you drawing a conclusion when you speak of them as Tool Company representatives?
  - A. I don't think so.
- Q. You are not doing a little arguing or briefing here when you call them Tool Company representatives?
- A. Not intentionally. I'm only trying to state the facts as I knew them.
- ITr. 3281 Q. Did you prepare this sentence? Is this your language?
- A. I sent through so many drafts I can't be sure, but I suspect so. That's what I would have said.
  - Q. You are sure it was not prepared by counsel?
- A. Well, I think one sentence versus the other it's pretty hard to say but this is what I would have said and this is what I would say now. Maybe I should have said more to explain it.
- Tr. 3511 • Q. Are you sure that the name of the group which you headed was not changed to Jet Planning Staff when it was organized?
- A. I don't recall that kind of a change. It certainly would appear here that during an interval it was called the Jet Planning Staff.
  - Q. During what interval?
  - A. I don't know. I don't remember.
- Q. What appears here—isn't this true, Mr. Rummel—is that you presided—taking Defendants' Exhibits 1 and 2 for identification—at a meeting which was referred to as the Jet Planning Staff and that you sent out copies of the minutes to members of the Jet Planning Staff and Jet Planning Group, as well as Mr. Pierson?

Isn't that all that appears in these documents?

- A. That certainly appears so.
- Q. There is no mention of a Jet Planning Committee?
- A. No, I don't see any mention.
- Q. Could it be that your recollection was a bit in- [Tr. 352] accurate when you prepared the statement, the prepared statement that in 1958 you became chairman of the Jet Planning Committee?
- A. I don't think so. It is not inaccurate with respect to the functions, purposes and operations of this committee, group or staff.
  - Q. I am talking about the name.
- A. My recollection—best recollection was and is that it was called the Jet Committee and I am a bit mystified now to see the term "Staff" used in this particular meeting.
- Q. You have no explanation as to why it was called "Staff" and you called it "Committee" in your testimony?
  - A. No, I don't.
- Q. Just what was the function of the Jet Planning Staff, of which you were chairman?
- A. Well, looking at this, it would appear the staff or the committee were synonymous.
  - Q. Would you answer the question, please?

(Tr. 353) Mr. Sonnett: I submit that's an answer, Mr. Brownell.

The Special Master: Will you read it back, please?

(The question was read.)

The Special Master: The question is on the function of the—

Mr. Hayes: Exactly.

Mr. Sonnett: The witness has already testified as to the function of the committee.

The Special Master: He testified yesterday as to the function of the committee.

#### A-455b

Mr. Sonnett: As counsel must realize there is a later reference to this Jet Planning Committee as well as to staff. This is just waste of time.

The Special Master: The answer is that they were synonymous.

Have you anything to add to your answers of yesterday as to the functions of the committee?

The Witness: No, sir, I can't think of any omissions.

## By Mr. Hayes:

- Q. Did this Jet Planning staff have anything to ITr. 3541 do with the acquisition of airplanes as such?
  - A. No.
- Q. Did they have anything to do as to how many airplanes should or should not be acquired at any particular time?
  - A. No, not really.
  - Q. What was their purpose?
  - A. The purpose was to, as I indicated yesterday—

The Special Master: The witness has said he has nothing to add to his testimony of yesterday as to functions of the committee.

Mr. Hayes: I understand but Mr. Brownell, this is cross-examination. I am not bound by any answer he gives.

The Special Master: To a reasonable degree.

Mr. Hayes: May I have the question answered? The Witness: Would you read it, please? (The question was read.)

- A. —plan and prepare for the airline for the use of jet aircraft.
- Q. Did they get information from some other sources as to what jet aircraft they were to plan for?

A. Other than what?

[Tr. 355] Q. From sources outside the committee.

A. Oh, yes.

Q. From whom did they get that information?

A. From various sources.

Q. Can you tell us who it was?

A. Well, of course, it was common knowledge as to the number of airplanes that were on order.

The organization and function of the jet staff was discussed between myself and Mr. Hughes prior to my taking on the job as chairman. And policies were discussed at that time, minutes of the proceedings, copies of the jet plans and premises and data of this general type were also provided to the Tool Company and representatives, and generally everyone was fully informed as to the basis on which the planning was proceeding with respect to the assumption of how many airplanes we would ultimately receive, is concerned.

Q. At this time in 1958, how many airplanes were being planned for?

A. At that time, I believe it would have been eighteen 331s, fifteen 131s. Those are both Boeings.

And 30 Convairs.

# Tr. 3791 • • • By Mr. Hayes:

Q. You testified that in March 1958 the Jet Planning Staff was looking forward toward 18 331s, 15 131s and 30 Convair 880s.

Later, the Jet Planning Staff learned, did they not, that TWA would receive only 12 331s, is that correct?

A. Yes.

Q. At that time were the plans of the Jet Planning Staff adjusted so that they would be considering only 12 331s?

- A. As I recall, they were adjusted in due course.
- Q. Were they consulted in any way as a group in connection with the change from 18 to 12?
- A. You mean was the group asked whether or not it
  - Q. Were they consulted in any way?
- A. Well, I don't recall the thing having been placed before the committee as such. Whether individuals were contacted or consulted is a good question.

ITr. 3801 Q. No, I am talking about the group.

- A. I don't recall.
- Q. There came a time when the group learned that the number of Convairs that TWA would receive would be 20 rather than 30, did there not?
  - A. Yes.
- Q. The plans of the Jet Planning Staff then adjusted to 20 Convairs rather than 30.
  - A. They subsequently were adjusted to reflect 20.
- Q. In connection with the change from 30 to 20 Convairs, was the Jet Planning Staff consulted as a group?
- A. I don't recall the Jet Planning Staff having been consulted as a group.

ITr. 3831 • • • Q. Can you tell us or do you have any recollection as to who prepared that particular document?

- A. I don't specifically categorically recall what the , group consisted of. This relates to dates that service will commence. To arrive at such dates more than prospective airplane deliveries had to be considered. Things like flight training and so on. And suitable groups would participate in those considerations and come to this position.
- Q. What is the number of that exhibit again? I have forgotten.

The Special Master: R-15.

Q. Do you have any present recollection as to who in fact prepared Exhibit R-15?

A. Except to the extent that I just described it, no.

Many of us participated in this kind of thing.

Q. I show you TWA Exhibit R-16 which is also [Tr. 384] headed on the same kind of page, "TWA Jet Plans and Premises," dated July 22, 1959, and at the bottom there is indicated "Origin, Planning and Research."

Can you tell us who prepared that document?

- A. No, my present belief is that this document was arrived at in substantially the same way as the others.
  - Q. You cannot identify the individuals involved?

A. No, not specifically.

Q. I show you TWA Exhibits R-12 and R-13, both dated in 1959, the first in March and the second in July.

The first does not show point or origin and the second shows origin to be Planning and Research.

I ask you if you can advise us who prepared those documents and would your answer if I asked the same questions concerning those as I did with respect to Exhibits R-15 and R-16 be the same?

A. These two premises relate to delivery dates of the Convair 880.

The delivery information essentially, as I recall it did come from my group who were familiar with the Hughes contracts and also what we believed the delivery expectancy to be through our having been fairly familiar with what was going on at the factory.

ITr. 3851 Just why one has Planning and Research indicated as the origin and the other piece of paper does not, I don't know at this point in time.

Q. As to those two, you cannot tell us who prepared them?

A. Well, I undoubtedly participated in the preparation of it, but as to precisely who put the pencil on this form, I don't know.

Q. In the preparation of both of them you participated?

A. Oh, I'm sure that I participated in things like this. I did not intend to imply that I didn't partcipate in the others either.

I certainly gave the eye to, I guess, every premise.

# Tr. 432] • • • By Mr. Hayes:

- Q. You testified on yesterday to a degree, which was not exhausted by any means, the position you occupied as special representative of the Toolco in connection with the contracts at Boeing and at Convair. Do you recall that?
  - A. Yes.
- Q. You mentioned, I believe, that you had authority to sign change orders within limits, which you could not recall as to amounts. Do you recall that?
  - A. Yes.
- Q. Those change orders that you had authority to make, were those change orders that you decided on yourself?
  - 'A. Not in every instance, no.
  - Q. Who else would be in on the decisions?
  - A. Well, a good many people.
- Q. Who are they? I thought you were going to tell us the names.

IT. 4331 A. Well, the technical ones were—either generated in or reviewed by various groups in the company who would form recommendations. And some of these people were in my own department, some in other departments, depending upon what the subject matter was.

Q. Can you identify these people, Mr. Rummel?

A. Well, there were lots of such people. It would become involved from time to time. I could give you a few examples, perhaps.

Q. Why don't you do that?

A. I don't think I can presume to list all the people's names who were involved in all of those years of jet acquisition activity.

Mr. Gordon Granger, for example, with respect to Doppler provisions, just as an example. In performance matters, in the earlier part, to the extent that the performance matters may have borne on operational considerations, Paul Frederickson would have been contacted.

Anything involving cabin services, including food and beverage would have been cleared with that part of the company relating—whose charge it was to work in that area and I don't recall the name of the individual.

Changes involving changes in spare parts and provisions were called to the attention of Mr. Shaunty and Mr. [Tr. 434] Reynard.

Q. I didn't get the first name.

A. Shaunty and Mr. Reynard. Any changes involving changes in maintenance and overhaul procedures of any consequence were called to the attention of Mr. Dunn or Mr. Jordan.

Q. Who?

A. Jordan.

Q. Jordan?

A. Yes. Possibly Mr. Walstrom, for their recommendations when appropriate. Similarly, other technical matters were pretty well either handled directly or when others were involved, those others were consulted.

We had a practice of pricing out all price changes.

Mr. Hayes: Is this a good time to recess for five minutes, Mr. Brownell?

The Special Master: Did you finish?

The Witness: These, I think, are examples. As I say, I don't want to leave the impression that these are all the people that were involved, because it depended—it was a sort of a working relationship that varied from time to time and depended on the occasion. Man were involved. So I think my answer, sir, is yes.

Tr. 4351 The Special Master: All right, we will recess for five minutes.

(Whereupon, a short recess was taken.)
The Special Master: Are you ready?

## By Mr. Hayes:

Q. You mentioned, Mr. Rummel, the names of certain people which is not an exhaustive list of those you consulted with in connection with change orders that you signed in connection with the aircraft contracts.

Were you talking about Boeing's contracts in that connection?

A. Broadly, yes.

Q. You were the Toolco representative in connection with all of the contracts that had been made for the jets with Boeing and Convair, were you not?

A. Well, I was the representative on the specific contracts that I mentioned earlier, that is, the eighteen 331 Boeings, the fifteen 131 Boeings and the thirty Convairs.

Q. That's right. Those are the ones I referred to. You were the special representative of the Tool Company in connection with the administration of those contracts, were you not?

A. Yes.

[Tr. 436] Q. Were these change orders that were designed for changes and improvements in the airplane, aircraft?

- A. The ones we adopted-
- Q. That is what I mean.
- A. (continuing)—we thought were improvements, yes.
- Q. These people you mentioned, were all those TWA employees?
  - A. Yes.
- Q. The others that you could not remember, did you have in mind further TWA employees?
- A. Yes, that's what I had in mind, although quite obviously change orders were discussed at length with the manufacturing personnel, again on occasion and depending upon the subject.

Some originated within TWA, some the manufacturer and some were suggested to us.

- Q. Did you discuss change orders with any representatives of Hughes Tool Company?
- A. Well, yes, from time to time various ones were mentioned or discussed with some representatives.
  - Q. With what representatives?
- A. Oh, I think on occasion with Mr. Cook, possibly Mr. Price, Bill Gay. It's—that's all I recall.
- Q. Did you have any discussions with respect to change [Tr. 437] orders with Mr. Hughes?
- A. It's likely that I did. I endeavored to have several discussions with Hughes, without success.
- Q. Did you endeavor to get Mr. Hughes' advice in any way in connection with the manufacture of the planes!
- A. We had many, many—well, the answer is yes, we had many technical discussions back and forth through the years on many, many facets of the jet plane design.

Q. I am thinking now of the administration of these particular contracts which began in 1956, and from there mtil the end of 1960, with specific reference to the change orders, did you work at all with Mr. Hughes in connection with those matters?

A. With respect to the change orders that I specifically approved, at the moment I don't recall having worked directly with him, although in the early days of the jets we exchanged many, many views in order to come to a common ground, if you like, on various design approaches, which were then generally pursued.

Q. You are speaking now of the period before the contracts were entered into?

A. Yes. Well, not—yes, but not necessarily limited to that. For example, safety aspects were an item of almost continuous interest.

[Tr. 438] Q. To whom?

A. To Mr. Hughes. And there were many discussions of the pros and cons of various aspects of design in various kinds of airplanes.

Q. Did Mr. Hughes have substantial knowhow with respect to the construction of airplanes and the design of airplanes?

A. Well, in my opinion he did.

Q. Pardon!

A. In my opinion, he did, yes.

Q. In preparation for entering into these contracts and in the configuration of the planes and so on, did you work closely with Mr. Hughes as well as TWA employees?

A. Yes, in many of the performance, payload range, economic projections were reviewed with Mr. Hughes and many were prepared specifically at his request, and these were discussed with him.

Q. With respect to these change orders that you made and administration of the contracts, were you concerned primarily with TWA's interest in that regard?

A. Yes, the basic charge was to configure airplanes so

they would be suitable for TWA operation.

Q. So far as you were concerned, did you feel that anything you did as special representative of the Tool Com-[Tr. 439] pany was in anyone's interest, other than TWA:

A. Well, in those days, it seemed to me that the interests of the Tool Company and TWA's interests were the same.

So it seemed to me that in configuring the airplanes to TWA's desires in accordance with the directives from Hughes, that I was also serving the Hughes interests.

- Q. In what fashion were you serving the Hughes interests?
  - A. I was complying with his wishes.
- Q. But his wishes were to have the best planes for TWA, is that right?
  - A. I think so.
- Q. So that ultimately you were looking at TWA's best interests?
- A. As I say, I found the interests of the two parties indistinguishable in my sphere of activity.
- Q. And in configuring these airplanes, to use your phrase, and in entering into the change orders and in administering the contracts, are you conscious of ever having done anything contrary to TWA's interests?

A. I don't know of anything. I didn't get the airplanes configured totally, as I wanted, but I guess I never really expected to.

[Tr. 440] Q. I don't know what you mean by that. Would you explain that you did not get them totally configured as you wanted them? Please explain that.

A. Well, simply there were occassions wherein it wasn't possible that that be done. Leading edge devices might have been such a case in the case of Convair.

Q. Any other instances? You mentioned that yesterday. We don't need to go over it again.

A. Yes, well, actually it was an extraneous comment.

Actually, I shouldn't have offered it.

- Q. Substantially, you got what you were looking for, is that correct, as to character and configuration of the airplanes?
  - A. Well, I think they are pretty good planes.
  - Q. Does that answer mean yes to my question?

A. Yes.

Q. If the contracts had been placed by TWA directly rather than Toolco, would you have been doing the same kind of work that you now do in supervising?

A. I would certainly think so.

Q. I mean your duties were the same, no matter who signed the contract with the aircraft manufacturers?

A. That is correct, yes.

Mr. Sonnett: Would you read that question ITr. 4411 back to me?

(The record was read)

- Q. You mentioned yesterday, Mr. Rummel, that you did not recall what your authority was with respect to change orders per airplane. Do you remember that?
  - A. Yes.

Q. I don't know whether this will help or not, but if you will look at your deposition at page 993-and I will

tell you the doubt is in my mind whether you are refering to Boeings or Convairs or both—you mention that you were limited to \$30,000 in airplane change. You mentioned it in connection with the leading edge device which you said would have cost more than \$30,000 per airplane. What I don't know is whether the \$30,000 was just for Convairs or the \$30,000 was also for Boeings.

Can you help us in that regard?

A. Well, I at the moment don't recall \$30,000, but I certainly would have no reason to doubt my prior testimony and it would have applied to the maximum cost per airplane per change—

Q. Each change!

A. (continuing)—that I set up initially as a limit. It would not apply to the gross—

Q. No, I understand it. Each change could be \$30,000— ITr. 4421 A. (continuing)—aggregate dollars of changes per plane per contract.

Q. My sole question now, I saw a note on this, Mr. Rummel, was whether you have any recollection whether the \$30,000 was limited to the Convairs or was it also the limit on the Boeings?

A. I don't know, but I don't recall any reason for those kinds of numbers being different. I just don't remember.

Q. What were the mechanics in handling change orders? What mechanical process did you go through when you had to handle change orders?

A. Well, the change orders were written by the manufacturers and submitted to us for approval.

Q. There would be some prior conversations of some kind, I suppose, before the final order was written?

A. You mean leading to the development of the change order?

- Q. That is right.
- A. Oh, yes.
- Q. In the case of Boeing, who would consult with Boeing in respect of the nature of the change order? Would it be you?
- A. In some cases I would myself. In other cases, ITr. 4431 people working for me would.

In other cases still others, but in all cases the change order activities were coordinated through my department.

- Q. The people who would speak in the case of Boeing were all TWA people who would discuss these change orders with them before the change order was written up?
- A. Generally so. There may have been cases in which some Tool Company people sat in on some of the hotter meetings, but I am a little vague at the moment on that. I think that occurred at a time or two.
  - Q. Was the same procedure followed at Convair?
- A. Not the—broadly, the same procedure. The detail procedure at Convair was somewhat different than at Boeing.
- Q. There, again, would Convair write up the change order after prior conferences with you or some of your people in TWA and then submit it to be signed by you? Would that generally be the procedure?
- A. Those changes which were formalized as part of the contract, yes, I think that was generally the case.
- Q. By talking of change orders, I am only speaking of change orders that became effective. I am not talking about changes that were talked about and never executed.
- A. The hesitation is only because reports came back [Tr. 444] that requests for changes in some instances had been made to Convair which I wasn't familiar with and from Tool Company representatives.

I don't recall those having been formalized, though, in the contracts for which I was responsible.

Q. You mean there were change orders that were made directly by the Tool Company; is that what you are saying?

- A. The changes that we have been discussing so far are those in my interpretation of your question that I was authorized to sign which excluded, as I indicated previously, all matters of delivery and those things relating to disbursement of funds and the like. So I am trying to answer your questions in the way in which I believe you intend them, and those with which I was charged.
- Q. You were also special representative at Pratt & Whitney and General Electric, I believe you testified?
  - A. Yes.
- Q. That was in connection with the acquisition of engines for the jets, was it not?
  - A. Spare enginees for the jets.
  - Q. Spare engines?
  - A. Yes.
- Q. Do you recall when those contracts were entered into?

ITr. 445] 'A. Well, they were actually, as I recall it, the purchase orders were preceded by a number of wire exchanges. The initial wire exchanges occurred, I believe, some time during the fall of 1955, I think—I am a little vague here—for the Pratt & Whitney engines, and later for the 880 engines, General Electric engines, I should say.

- Q. Were the orders for the aircraft placed before the orders for the spare engines were placed?
- A. Probably so. By aircraft, you mean the Boeings; is that correct?
  - Q. I am speaking first of the Boeings.
  - A. I don't believe so.
- Q. You thing the engines were ordered before the aircraft?

A. I think there is an exchange of wires which had the effect of holding engine price prior to placing the airplane order, yes, I am quite sure of that.

Q. How about the Convairs, were the aircraft ordered

before the spare engines were ordered?

A. No. I think the spare engines were ordered at least after the agreement to agree or the initial agreement was signed with Convair. There is an agreement of June and one later on in the year and the final agreement being, of course, later on.

Tr. 4461 Mr. Hayes: I would like to have marked as Defendants' Exhibits for identification 4, 5, 6 and 7 respectively, a letter dated February 14, 1956, from Hughes Tool Company, signed by Raymond Holliday, addressed to Pratt & Whitney of United Aircraft, relating to JT4A-3 turbojet engines.

(Letter dated February 14, 1956, from Hughes Tool Company, by Raymond Holliday, to Pratt & Whitney of United Aircraft, marked Defendants' Exhibit 4 for identification as of this date.)

Mr. Hayes: As Exhibit 5, a letter dated February 14, 1956, from Hughes Tool Company, signed by Raymond Holliday, addressed to Pratt & Whitney, relating to JT3C-4 jet engines.

(Letter dated February 14, 1956, from Hughes Tool Company, by Raymond Holliday, to Pratt & Whitney, marked Defendants' Exhibit 5 for identification as of this date.)

Tr. 447 Mr. Hayes: As Exhibit 6, telegram dated February 15, 1956, from Hughes Tool Company by Raymond Holliday to Pratt & Whitney.

(Telegram dated February 15, 1956, from Hughes Tool Company by Raymond Holliday to Pratt & Whitney,

marked Defendants' Exhibit 6 for identification, as of this date.)

Mr. Hayes: As Exhibit 7, a letter dated September 7, 1956 from United Aircraft to Hughes Tool Company accepted by Hughes Tool Company.

(Letter dated September 7, 1956 from United Aircraft to Hughes Tool Company accepted by Hughes Tool Company, marked Defendants' Exhibit 7 for identification, as of this date.)

Mr. Hayes: As Exhibit 8, a letter dated September 7, 1956 of which we have only a copy unsigned from United Aircraft Corporation to R. W. Rummel of TWA.

(Unsigned copy of letter dated September 7, 1956 from United Aircraft Corporation to R. W. Rummel of TWA, marked Defendants' Exhibit 8 for identification, as of this date.)

By Mr. Hayes:

Q. Mr. Rummel, I hand you Defendants' Exhibits 4 to 8 for identification, and I ask you if that group of documents represented by those exhibits so far as you ITr. 443 can recall contain the contracts for the purchase of the spare engines from Pratt & Whitney.

Mr. Sonnett: Would the Special Master inquire of the witness whether he ever saw any of these before and if so which? I think it might shorten things up a little.

The Special Master: Mr. Rummel, have you seen these before?

The Witness: I can't be entirely sure. Probably I have.

- Q. You certainly saw Defendants' Exhibit 8 before, did you not, Mr. Rummel?
  - A. I would certainly assume that I had.

Q. You administered the contract with Pratt & Whitney?

A. I administered the Pratt & Whitney contracts in the same way that I administered the engine contracts, that is, the authority I had was for making changes to the engines.

I didn't administer the other aspects.

The Special Master: Financing?
The Witness: No.

- Q. I notice there are three different kinds of engines referred to in these papers. Maybe you can tell [Tr. 449] us what they are.
  - A. I haven't read the last two. Should I-
- Q. I am sorry. I beg your pardon. I thought you finished.
  - A. I've read through.
- Q. There were three different engines I noticed that were ordered. On February 14th, order 1 was for 30 engines referred to as JT3C-4 and 180 engines designated as JT4A-3, and on February 15th, telegram order 90 more—there are only two kinds of engines—90 more of the second group.
  - A. Yes.
- Q. What is the difference between those engines, Mr. Rummel?
- A. JT4A-3 engines powered the international Boeing Model 331 type aircraft.
  - Q. Is that the same as the J75?
- A. The J75 was the military designation for the forerunner engine. So this is a—essentially the same but still a derivative engine of the J75.
  - Q. And the JT-3 was what?
- A. The JT3 would be as to the J57 as to JT4 was to the J75.

Q. Which was not generally speaking an [Tr. 450] intercontinental engine?

A. That is correct, sir.

That powered the 131 type Boeing which as we indicated yesterday was somewhat marginal for international operation.

Q. I notice there are a total of 300 engines ordered. What was the reason for ordering that number?

A. It is a long story.

Mr. Sonnett: Will the Special Master inquire whether the witness knows or not, if he knows the reason?

The Special Master: What was the question again?

(The question was read.)

The Special Master: Do you know what the reason was!

The Witness: Well, I can report my understanding of the reasons as they existed at the time. What motivated Hughes truly I can't presume to really know.

The Special Master: With that limitaion do you want to press the question?

Mr. Hayes: Yes, sir, I do.

The Witness: Well, the initial order of [Tr. 451] JT3 type engines was for that number of engines which we believed to be appropriate to support a fleet of 15 131s.

The initial order of JT4 engines is a little more obscure as to the reason for the large number.

The number embraced—well, let's say came from a number of considerations as I then understood it

I might say the selection of the JT4 as being the one to buy in large quantities as opposed to the JT3 was insofar as I knew it at the time the result of a personal appraisal on my part for Mr. Hughes. It was a studied appraisal of which engine as a type would have the longer useful life and the greatest prospects for application to aircraft.

At this—well, then I say this time, these letters I should point out that I have in front of me followed the initial exchange of wires by some time that I referred to yesterday. The exact amount I just don't recall now. It would fall out of the records somewhere, I'm sure, if someone was willing to chase

it.

And the large numbers were as I then know it secured with these possibilities in mind. One was in the event Convair produced an airplane that made use of ITr. 4521 these engines that we would not find the delivery of the airplanes limited by the availability of engines. We would have had the engines on order.

Secondly, for over a fairly extended period, we were working with Avro of Canada who had proposed the development of a supersonic type transport which would use six of these kind of engines.

Now, this supersonic proposal went through a series of developmental stages, as a proposal. And

that's why it took such a period of time.

Additionally, as I recall it, consideration either was being given at this time or was shortly to be given to the possibility that Hughes would manufacture aircraft in which it might use these engines.

Now, these were impressions that I had at the time as to the reasons for these engines, and I am

not confident that I am reflecting what went on in Hughes' mind.

The Special Master: You made that clear.

The Witness: So in summary, the 180 engines fell out of sort of a matrix of possibilities.

Now, the additional 90, as far as I have ever known were solely Mr. Hughes' proposal which ITr. 4531 was not handled through me, but I believe through Raymond Cook on the eve of the Pratt & Whitney deadline. Great pressures had been exerted on Pratt & Whitney by myself and by others in the Tool Company to obtain the best engine delivery positions that could be obtained. Pratt resisted this.

And as I understand it, the 90 were thrown in on this 5 per cent down payment base in order to obtain from Pratt & Whitney any more desirable positions than would have been obtained had the order been limited to the 180. And that's how it got to be 300, I believe, very late one night and rather quickly.

Q. Who is Bill Gwinn?

A. Bill Gwinn is now president of the Pratt & Whitney Corporation and if memory serves correctly at that time he was general manager of Pratt & Whitney.

Q. You negotiated these contracts with Mr. Gwinn, did you not, or at least participated in the negotiations?

A. It was pretty much as I just described it. I initially after talking to Hughes as I mentioned yesterday, approach Gwinn, initially in an effort, CTr. 4541 as I recall it, to get the deadline extended, or to get the payment reduced. I don't recall all the details now.

And then I continued to deal with Gwinn and I think Len Mallet with respect to the initial grouping of engines. I don't recall the number JT4s being 180 initially. I don't

recall what it was, but I think it was considerably less. It later became a larger number.

Perhaps initial wires might be a clue there. I just don't remember it at the moment.

- Q. You mentioned three possible reasons, as I remember your testimony, as to the number (1) that they might have been used in the Convair planes?
- A. In a Convair, not the 880.
  - Q. You were not referring to the 880?
- A No, sir.
  - Q. To what Convair plane were you referring?
  - A. The Model 18.
- Q. Had the Model 18 not been abandoned by this time in 1956?
- A. Well, we had the—I think the answer is the 18 was on ice at that time in 1956. We were exploring the Model 19, Model 20 and were well aware if Convair's [Tr. 455] intended style to get into the commercial business and we weren't sure exactly what they would come up with.
- Q. So there was still the possibility at the time the engine order was placed that Convair might produce a plane which would use these engines, is that correct?
- A. I say this is a matrix consideration and I think it was quite clear at that point in time that it would not have been precisely the Model 18, however.
- Q. If used in the Convairs, these engines would be original equipment as well as spares, would they not?
- A. I would assume so.
- Q. Would you tell us what were the Models 18, 19 and 20 of Convair?
- A. Well, yes. The Model 18 was a highly swept commercial passenger cargo transport designed to satisfy both the domestic and international service requirements from

the outside. It was powered with—it would have been powered with four JT4 type engines.

It was believed to have—and this was our aim—to have superior performance to the models of the Boeing 707 and the Douglas DC-8 as we understood it that existed when the Model 18 was initially laid down.

Now, the Model 19 was a still larger plane. I'm a little vague at the moment exactly how it was [Tr. 456] configured, but in any event, it led to the Model 20 which—

Q. Was the Model 19 like the 18 intended to be both a transcontinental and intercontinental plane?

A. Yes, I believe so. And I think that was also true of the Model 20.

As I recall it now, the Model 20 was a double-deck, large—much larger six-engine airplane, intended for that kind of service, intended to be a type airplane which the other manufacturers would have been quite unwilling to produce.

- Q. You mentioned also that a contributing reason for the large number of engines was the negotiations with Avro at the time who were considering—did you say a supersonic plane?
  - A. Yes, that's what I said.
- Q. Yes, that's what I thought you said. Were those negotiations then in existence?
  - A. With that?
  - Q. Were negotiations then pending with Avro?
- A. Yes, they were—call them discussions, call them negotiations. They certainly were not at a white heat with dripping pens over contracts, but they were discussions.

ITr. 4571 Q. Were you participating, by the way, in whatever discussions there were with Convair with respect to the Models 18, 19 and 201

A. Well, I participated and handled many discussions but I'm sure that there were discussions between Hughes

and Convair to which I was not a party and possibly some others.

- Q. But you were a party to some discussions?
- A. Oh, yes.
- Q. How about Avre, were you a party to discussions with Avro?
- A. Yes. Here again I don't know whether it was all of them or not, but I participated in meetings with Avro personnel and Hughes.

And I might clear the record and say it is Avro Canada. There is an Avro in England.

- Q. You mentioned also the possibility that existed at the time that Hughes Tool Company might engage in manufacture of jet aircraft as a third—
- A. I guess it was Hughes Tool. I don't know whether it was Hughes Tool or Hughes, but at least Hughes.
  - Q. The Hughes interests?
  - A. Yes.

ITr. 4581 Q. Is that what was known as Project Greenland at one time?

A. I believe it was.

The Special Master: Was that the manufacture of engines or aircraft, did you say?

Mr. Hayes: I am sorry.

The Special Master: Was that the manufacture of—

Mr. Hayes: Aircraft, not engines.

The Special Master: I think you said engines.

Mr. Hayes: Did If

The Special Master: Yes.

Mr. Hayes: I misspoke myself. I should have said aircraft.

Q. Nothing ever came of that project, did there?

A. Well, an application was filed with the CAB, and I'm not really sure what happened to it. I had the impression that land was acquired in Florida or to be acquired and I'm not sure what happened there.

Q. Did you ever know of any planes being manufactured?

A. I don't know of any that Hughes manufactured with JT4 engines.

ITr. 459] Q. That is what I mean, any jet planes he manufactured with JT4 or JT3 engines.

A. I don't know of any.

Q. Were there any change-orders signed by you in connection with the Pratt & Whitney engines?

A. Yes, I believe there was.

Q. Do you recall how many?

A. I think only one.

Q. Do you recall the nature of the change?

A. Not in detail. It had to do with some change in accessories, the oil filter or some such as that. I just don't recall the detail.

Q. Not a major change?

A. No.

Q. Or was it a major change?

A. It was not a major change. It was a change, as I recall it, that involved not only Pratt & Whitney but the airframe manufacturers as well.

Q. You mean the Boeings?

A. Yes, the airplane people. The Boeing, yes.

Q. Did you mention price, impending price increase as one of the considerations for placing the order for engines?

A. No, but I think that's fair. That doesn't [Tr. 460] account for the very large number, though. That would

account for the numbers that we immediately saw a need for.

- Q. Did you recommend an order be placed for engines, forgetting the number now, because of the impending price increase?
- A. I called to Mr. Hughes' attention the fact that as of a certain date which was near at the time, that if orders were not placed for spare engines that the price would go up I believe it was 5 per cent. At least it would go up. 5 per cent comes to mind.

I pointed out that if he wanted to save that money, the order should be placed.

Q. That would be an eventual saving to TWA, of course, when the planes were delivered to TWA?

A. Well, I don't know. I didn't—I didn't have any way of knowing. I did not know under what terms and conditions the planes would finally run to TWA, signed over to TWA.

- Q. Were you at all acquainted with the terms of the control order that had been entered by the CAB covering transactions between TWA and the Hughes Tool Company?
- A. I would have assumed that a saving in engine ITr. 4611 price would have been passed along.
- Q. You knew that for a fact, didn't you, Mr. Rummel?
- A. I didn't know it as a fact. I would have assumed it.
- Q. Had you ever read the order of the CAB?

  A. I don't know that I had, but I'm sure that it has been described to me and it is quite possible that I had read it.
- Q. Did anybody in describing it to you tell you that the Hughes Tool Company was not permitted to make profits on its dealings with TWA?
- A. I don't recall that anybody told me that or not.

Q. When you called attention of Mr. Hughes to the impending price increase—incidentially, there was a required down payment of 5 per cent to buy Pratt & Whitney, was there not?

A. Yes, that was required. I can't recall whether I succeeded in putting the date off or not.

Q. Did he then authorize you to negotiate with Bill Gwinn?

A. He authorized me to—rather quickly to negotiate with Gwinn or really with Pratt & Whitney. [Tr. 462] I think Gwinn was mentioned. I don't think I interpreted the requirement to work with a specific man there.

Q. You were authorized to deal with the top officials of Pratt & Whitney in connection with these engines?

A. Of course. I was authorized to deal with the appropriate officials of Pratt & Whitney.

Q. On one occasion did you attend a meeting at the Beverly Hills Hotel with an Avro representative and Mr. Hughes—

The Special Master: Can you give an approximate time on that?

Mr. Hayes: I have not quite finished the question. The Special Master: I am sorry.

Q. —at which time you called to Mr. Hughes' attention that there was a deadline on when the engines could be ordered?

A. Yes.

Q. That was shortly before the negotiation for these engines, was it not?

A. Yes.

I did not undertake any negotiations in this respect without first discussing it with Mr. Hughes.

ITr. 4631 Q. Was it at the same time that you told him of the impending price increase?

- A. Yes. That was the main point of the entire discussion at that time.
- Q. At that time also, were you still jockeying for delivery positions with Boeing with Hughes wanting the earliest delivery positions he could get?
  - A. I believe that's probably right, yes.
  - Q. You so testified, did you not, on your deposition?
- A. If you say so. I wouldn't be surprised. I'd have to look it up.
- Q. How many spare engines would have been needed if TWA had received all 33 of the Boeings?
- A. This is sort of a memory test. As I recall it, we figured on 50 per cent on the JT3s and I am not entirely sure of the JT4s. The number that comes to mind is 60 on the JT4s although ultimately I think we took less. I am speaking now of this same period of time which I assume—
- Q. That's right, I am talking about just this period when these orders were placed, Mr. Rummel.

Was it in your mind at the time that if TWA obtained additional airplanes such as those you mentioned, [Tr. 464] there would be use for all or nearly all of these engines, since some of them would have to be original equipment?

A. I don't recall understanding that TWA would have the use of 300 engines, no.

The Special Master: What do you mean by 50 per cent? It wasn't clear to me.

The Witness: I am sorry. It is 50 per cent of the installed engines in the airplane. In this case it would have been 30 engines.

Mr. Sonnett: While we are at that, would you just at some point tell me for the sake of the record what period of time are you talking about?

Mr. Hayes: 1956.

Mr. Sonnett: I know, but are we talking about February through to September or what?

The Witness: I am talking about more than 1956. I am talking about the fall of 1955 as well.

Q. That was when the negotiations began, you mean!

A. Well, I can't tell you precisely when they began. My recollection is it went through a number of months, the latter part of 1955, this exchange of wires, the phone conversations that preceded the wire [Tr. 465] exchange and so on. And I was speaking generally on this period.

Q. You can't-

Mr. Sonnett: Will you state what the period is you have been talking about, from when to when?

The Witness: Well, the fall of 1955 through—it must have been the latter part of 1956 when the thing wound up. I am not entirely sure when it came to 300 engines, but it was substantially after the initial discussion occurred.

It would have been probably late 1956. I note this one letter indicates that. Two letters indicate it.

- Q. Did you have it in your mind at the time these engine orders were placed that if TWA did not use the engines it would be easy to dispose of them to others who would need them, other airlines?
  - A. Did I have that in mind?
  - Q. Yes.

A. I don't recall specifically having that in mind.

I think it was clear that this kind of an order placed it in short supply and it would well have been [Tr. 466] a consideration.

Q. Might I suggest to you, Mr. Rummel, that over the evening, before we meet on Friday that you re-read pages

961, and I think it ends on 968 of your deposition—I have been paging it to see if it goes beyond that—offhand I did not find anything—I am not limiting you to those pages—and I would ask you on Friday morning if your testimony would be the same today if you were testifying on the matters that you did cover on those pages.

Would you do that, please?

The Special Master: Is that clear?
The Witness: Yes, pages 961 through 968.

Q. Yes, as I say, I am not limiting it. I think those are the pages involving the engines. I may have slipped something, but I hope we haven't.

A. Yes.

Mr. Hayes: Can we adjourn now?
The Special Master: We will adjourn now until
Friday at 10:30.

# [Tr. 511] • • • By Mr. Hayes:

Q. Mr. Rummel, you say in your prepared statement that regardless of your title your primary duty during most of your period of employment at TWA was to recommend the size and type of fleets to procure for TWA, do you recall that?

A. Yes.

Q. Were your recommendations solely as to acquisitions of plans?

A. No.

Q. What else did your recommendations encompass?

A. Maybe I am drawing too fine a line.

They related to fleet planning and we attempted [Tr. 512] to recognize as I indicated earlier not only the kind of plane

but we tried to hone in on the size of the fleets and consider their application.

Q. What I am trying to find out, Mr. Rummel, is whether your recommendations were limited solely to the procurement of airplanes.

A. Well, they certainly included, for example, recommendations concerning what not to procure in some instances.

Q. Did you make any recommendations with respect to the kind of changes to make or in the reduction in number of planes being used?

A. You are speaking, sir, of changes of airplanes

Q. That's right.

A. -or configurations?

Q. Quantities.

A. Quantities?

Q. Yes.

A. I certainly did recommend increasing standing orders at times.

Q. Did you ever recommend decreases from standing orders?

Mr. Sonnett: May we assume this relates only to jet aircraft, Mr. Hayes, unless you other-[Tr. 513] wise indicate in your question?

Mr. Hayes: His statement is very broad. He did not limit it here in his statement to jet aircraft. So I don't know.

If he says that his statement has to do solely with jet aircraft, that is one thing. But his statement is all inclusive. It covers the whole period of his employment by TWA.

Mr. Sonnett: My only point was to be sure that the witness understood what it is you were seeking

to elicit, that is all, whether it is jets or whether it goes back to the days prior to the jets as well.

The Special Master: Let us confine the question at first to jet aircraft and then it can be followed up if desired.

Mr. Hayes: I would rather have it as broad as his statement is, Mr. Brownell. This is his statement and I want to know what he means by it.

The Special Master: Whatever is easier for the witness to comprehend.

A. And the period of time?

Q. Your language is your primary duty during the ITr. 5141 period of your employment by TWA has been to recommend what size and what type fleets to procure for TWA.

Were you including in that statement piston aircraft as well as jet aircraft—

A. Yes, sir.

Q. -or were you not?

A. Yes, sir.

Q. Then my question has to do with both piston and jet aircraft.

A. The question, I believe, was did I ever recommend reducing.

Q. That is right. You said you had recommended increasing orders. The question is did you ever recommend decreasing orders?

A Yes.

Q. Were those for jets or for pistons?

A. Pistons.

Q. How often did you recommend decreases?

A. I only recall one such instance.

Q. Was that recommendation based on considerations brought to your attention by other departments of TWA?

- A. I don't believe so.
- Q. Was it a technical recommendation?
- A. Yes.

[Tr. 515] Q. Did it have to do with the kind of aircraft that had been on order?

- A. Yes.
- Q. You found some technical deficiency in it, perhaps!
- A. Yes.
- Q. To whom did you make these recommendations of which you speak in your prepared statement?
- A. Depending on the time, to Mr. Hughes, to the Hughes people on occasion, and to TWA management. It would vary somewhat.
- Q. To whom in TWA management did you make recommendations? I am confining the question now entirely to jets.
  - A. Here the question is extremely broad. You are referring now to the types or numbers of aircraft?
  - Q. I am referring to what you said. Your recommendations as to the size and type of fleets to procure.
  - A. I'm afraid if I don't answer more categorically, it can be confusing.

I do not recall specifically recommending as opposed to asking concurrence on, for example, the numbers of 880s once the contract was ready for adoption.

Initially the number of 880s, as I best re- [Tr. 516] call it now, did come from TWA.

- Q. From whom in TWA?
- A. I can't be absolutely sure, but it was through the Traffic function and the number was concurred in by myself.
- Q. Do I understand you to mean—and if I am wrong, please correct me as I am sure you will—that the recom-

mendation to acquire 30 Convair 880s came originally from the Traffic Department.

A. Well, it came from several places.

In TWA, initially the 30 came through the Traffic Department, and as a result of their receiving from me an understanding of what the proposed airplane would be and would do.

- Q. Originally from the Traffic Department you said?
- A. That was a step.
- Q. Who were the other departments or the other individuals who made recommendations with respect to the same thing?
- A. Well, our own studies indicated that that would be an appropriate number in combination with other assumptions with respect to total fleet composition.
- Q. When you used the erpression "our own studies," ITr. 5171 whose studies are you referring to?
  - A. My department.
- Q. You indicated before that the number of 30 came from Traffic and other sources in TWA.

Who were the other sources beside yourself and Traffic, if anybody?

A. Here again it depends on the timing of the question. Initially you are covering a very broad period of time.

The number 30 was reviewed by many people in TWA prior to the contract being finally signed by Hughes Tool.

- Q. Who suggested the number 30 in the first instance, if you can recall?
- A. I believe the number 30 as best I can recall, came through the Traffic function in TWA to me, this all with respect to TWA's participation.
  - Q. You concurred in it?
- A. Yes. As I recall it now, I concurred that 30 was a reasonable number.

- Q. Was it you who recommended the number of Boeing aircraft that should be acquired, or did others participate in such recommendations?
- A. I ought to make it clear, because I fear there ITr. 5181 can be some confusion here, that the recommendation on the 30 initially was the result of my trying to get better prepared to discuss the number of planes of that particular category with Hughes.

With respect to the initial placing of the order and the determination of the 9 versus some other number, as I best recall it, the nine aircraft, the 131s, was not a TWA number, but I'm quite sure that people in TWA were familiar with it.

- Q. My question encompassed all of the Boeing aircraft that had been ordered.
- A. The number 18 was a result of I think multiple considerations but I honestly can't specifically recall of how we arrived at the number 18.

The numbers in each case only become numbers with Mr. Hughes' acceptance of them with respect to action.

- Q. I am trying to find out your recommendation, Mr. Rummel. Did you make a recommendation for eighteen 331s?
- A. Well my best recollection of 18, is that during a number of phone calls with Hughes, we mutually came to the position that 18 would be a reasonable initial order, but I thought you are asking about the TWA [Tr. 519] specific inputs and recommendations that I might have had at that time. This is where I am rather vague at the moment.

Q. That was part of my question, too.

Did anybody else in TWA—you have told us now that you and Mr. Hughes agreed it was the right number for an initial order.

A. Yes.

- Q. At least that's how I understand your testimony.
- A. That's the way I recall it.
- Q. Pardon!
- A. Yes, sir, that's the way I recall it.
- Q. Did anybody else in TWA make a recommendation as to the number of 331s to be acquired?
- A. It is certainly quite possible, but as I say I am a little vague as to specifically how that number was arrived at.
- Q. Did you have any discussions with any other personnel in TWA with respect to the number of 331s to be ordered?
- A. Well, there were many reports, letters, performance analyses and the like which would illustrate what various fleets would do for the company, which were [Tr. 520] reviewed by him, both internally, and many of these things were discussed with Hughes, that—I am trying to answer the question as categorically as I can with respect to a specific recommendation that I received which led directly to a selection of the number 18, if I understood you correctly.
- Q. I asked you if I recall rightly whether there were any other personnel in TWA with whom you had discussions as to the number of 331s to be ordered?
- A. Well, I'm confident that there was, but I am hard put at the moment to recall the specifics.
- Q. Do you recall with whom in TWA you had such discussions?
  - A. Not at the moment, no, sir.
- Q. Do you recall whether or not numbers other than 18 were considered in the course of those discussions?
  - A. Again with TWA personnel?
  - Q. That's right.
  - A. Is that correct?

Q. Yes.

A. I'm just a little vague on that number.

Q. You can't recall what may have been said with respect to the size of the 331 fleet by anyone else in TWA?

[Tr. 521] A. Not specifically at the time the order was placed, no.

- Q. Whatever discussions you may have had with other people in TWA as to the size of the 331 order, did you have those discussions before you and Mr. Hughes came to this agreement you mentioned before?
- A. I don't think the number 18 was, but I can't be entirely certain.
- Q. You draw a blank on that at the moment, Mr. Rum-mel!
  - A. Yes. It may come to me.
- Q. Did you, as a result of studies you made, arrive at the number 18?
- A. Well, we had studies which bore on the point. Whether they specifically showed 18 I'd have to—I don't know, but I believe they did. I'm not certain at the moment.
- Q. How about the increases in the orders for the 131's, were they based on recommendations by you?
  - A. I urged that the numbers of those plans be increased.
- Q. Did you specify in your urging the numbers by which the order should be increased?
  - A. I urged-well, yes, and no.

ITr. 5221 It went through a series of stages. I urged two things: That the numbers be increased, and that the deliveries be improved through the negotiations.

Q. I am asking if you recommend the specific numbers by which the orders were increased?

A. As I recall it, the orders were increased initially by less than I wanted them increased.

Q. Do you recall what recommendations you did make with respect to increasing the 131 order that was initially placed?

A. I was finally satisfied with 15, but I don't recall the detailed recommendations that led to that, if that's what you are getting at.

Q. I am trying to find out what specific recommendation you made with respect to the number of 131s to be ordered.

That is what I am trying to find out.

A. Much of this was studied, much of it was handled in letter form, but with Hughes Tool and particularly with Mr. Hughes verbally, and to specifically when so many changes were made in the contract recall each turn of events is a little difficult for me.

I was not satisfied with the number of planes that were on order.

ITr. 5231 Q. At which point?

A. Pardon?

Q. At which point were you not satisfied?

A. When nine were placed.

Q. My question was, do you recall by what number that order for 131's should be increased?

A. No, I guess is the right answer, that I don't specifically recall what had transpired at each step of the way there.

Q. To whom did you make these recommendations, Mr. Rummel? Let us stay with the 131's for the moment, the increases in the numbers.

Q. These were discussed with Mr. Hughes and with Mr. Cook as I recall it now.

Q. Did you discuss your recommendations with anyone in TWA?

A. Well, I suspect I did.

Q. Do you remember?

A. I say we had studies bearing on this point. I don't categorically remember a specific day and hour in which I talked to people but I'm sure I discussed some of these things with people in TWA to get their views.

Q. Do you recall with whom in TWA you discussed

[Tr. 524] increases in the order for 131's?

A. I'm confident that I touched base with Mr. Collings, for example, but I don't recall the exact specifics.

O. You say you are confident that you touched because.

Q. You say you are confident that you touched base with Mr. Collings.

A. That's right.

- Q. Do you have any recollection as to what you said to Mr. Collings in that connection?
  - A. Not categorically, no.
- Q. Do you have it categorically or non-categorically any recollections?
- A. I don't recall any dissents with respect to the number going to 15.

ITr. 5251 Q. You just don't recall your conversation in this connection with Mr. Collings, is that correct?

A. I'm trying very hard to answer just as explicitly as I can because so many different things transpired, and I don't specifically recall what was said in detail at all through these months of changing the orders.

As I say, there were many studies, many conversations and I'm sure many discussions.

Q. You cannot recall with whom you had the discussions other than Mr. Hughes and Mr. Cook and Mr. Collings, is that correct?

Well, we certainly discussed these things internally in the department.

Q. That is what I am trying to find out. With whom!

A. In my own area, Mr. Rourke, Mr. Fannon, those who

would have been involved in making the studies that relate to the appropriateness of the airplane numbers

Q. Have you any recollection as to whether your recommendations for the increase in the order for 131's was brought about in part by recommendations received by you or by management other than you from other divisions of the company? I mean of TWA.

The Witness: I missed part of that. Could [Tr. 526]

· (The question was read.)

A. Well, I recall that Mr. Cocke was dissatisfied with the initial number of jets that were ordered.

Q. You mean the nine?

A. Yes.

But as to specific recommendations, I don't. The sequence of the changing numbers here related to more than simply making a decision or receiving a recommendation as to what the number should be. They were the result of a negotiation with Boeing as to the degree to which they could improve deliveries and make additional planes available in an early period.

Q. You have mentioned several times before, or at least once, that you would receive recommendations from Traffic leading to the decision as to the size of any particular fleet?

A. That is correct.

Q. In connection with the 131's-

A. Yes.

Q.—and the increases in orders of the 131's, were recommendations made by the Traffic Department?

A. Is that a quesetion?

Q. Yes.

Tr. 527 Mr. Sonnett: Are you asking him whether he so testified or are you asking the fact?

Mr. Hayes: I am asking the fact. Mr. Sonnett: Answer it as best you can.

A. Yes, we had exchanges directly with Traffic as to the number of airplanes our fleet should consist of.

Q. Do you recall any recommendations from the Traffic

Department that the order for 131s be increased?

A. I just indicated that I certainly recall having discussions and understanding that Mr. Cocke who then headed that function was displeased with the number of planes we had.

I am trying to distinguish general knowledge and exchange of information from a specific recommendation per se which I understand is what you have been talking about

- Q. That's right. I am trying to find out what, if any, recommendation was made by Traffic for what increases in the number of 131s.
- A. There was a broad recommendation that they just had to have more jet airplanes. And I think—as to whether it was at any one point in time, whether it was 9 to 11 or 9 to 12, that sequence came [Tr. 528] out of the negotiation, more than recommendation from Traffic.
- Q. Do you recall the specifics of any recommendation by Traffic with respect to the increase in the orders for 131s!

A. Not specifically at the moment, no.

- Q. Did your recommendations that it was your duty to make involve also recommendations as to the use to be made of equipment TWA had on what sectors, et cetera, et cetera?
  - A. At times, yes.
  - Q. Was that your primary responsibility?
  - A. It was part of the consideration.
  - Q. What does that mean, Mr. Rummel?
  - A. It means we couldn't do much planning without-

Q. I am sorry.

A. We didn't do much fleet planning without considering where they would be used.

[Tr. 543] • • •

- Q. Would it be fair to say that Mr. Hughes and you consulted together and advised each other with respect to considerations such as safety?
- A. Well, I—I think that's true. I think the question of degree either way wasn't asked, but yes, I think that's true.
- Q. He was recognized expert in aeronautics, was he
- A. Well, I certainly had that impression. I thought he was pretty good.
- Q. Did you find his advice valuable in connection with the construction of the jets so far as the technical side of the jets was concerned?
  - A. Yes, I think so.
- Q. Did you have authority up to the period ending December 31, 1960, to order aircraft for TWA?
  - A. No, sir.
  - Q. You never had that authority?
  - A. No, sir.
  - Q. Who in TWA has that authority?

Mr. Sonnett: Would you read that back?

ITr. 544] The Special Master: Had that authority.

Mr. Hayes: I want the question to stand as it is, if I may, Mr. Brownell.

- A. Whoever the board of directors authorized.
- Q. Down to today, you don't have any such authority
  - A. You mean just to order airplanes on my own?

- Q. Right.
- A. No.
- Q. Do you know who else in TWA besides yourself made any recommendations to management as to the size of the Boeing or Convair fleets? Can you identify the person?
- A. Well, Mr. Rourke did through me at times. I'm sure that others who were interested weren't silent on these things, but I'm not certain as to who said what, when, the detail and to whom.
- Q. Can you identify the departments which made recommendations forgetting the personnel involved?
- A. Well, I would certainly think that—I know with respect to pistons the Traffic Department would offer recommendations as to numbers of planes, or sales, as the case may have been. I'm speaking of that function rather than—

[Tr. 545] Q. Did they with respect to jets?

- A. I don't recall that, although, as I say, they did participate in certain phases.
  - Q. Did the Sales Department make recommendations!
- A. That's what I was saying about the sale—I used this term Sales and Traffic interchangeably.
  - Q. You used them interchangeably?
  - A. Yes.
- Q. Do you know any other department that made recommendations?
- A. Yes. At least at one point in time the Planning Department did.
  - Q. Any other departments?
  - A. I don't know.

Mr. Hayes: I am going to a different subject now, if we may adjourn.

The Special Master: Yes.

(Whereupon, at 12:30 p.m. a luncheon recess was taken.)

# Tr. 5461 AFTERMOON SESSION 2:00 p.m.

ROBERT W. RUMMEL, resumed the stand and testified further as follows:

(Discussion off the record.)

Mr. Sonnett: In terms of your having storage space, we have made some space available. If you want a room here, we can give you the small conference room next to this, so you can leave in there anything you want to, in terms of saving movement back and forth. There is a small conference room.

Mr. Hayes: Thank you. That would not be acceptable, for various reasons.

Mr. Sonnett: To the extent that will help you, we will be happy to do that.

Mr. Hayes: That is not acceptable. I don't know why in the world you are not willing to meet at our office, which would serve our convenience tremendously, would conserve at least 35 to 40 minutes each day.

Mr. Sonnett: Because then we will have to tote documents, and for a period of a year and a half [Tr. 547] we met at Chester's office faithfully every day and went through this, and it is about time we met here.

Mr. Hayes: You very well know the difference between depositions and trial.

Mr. Sonnett: That is not the point. The point is we had the burden for a year and a half and there is no reason why we should now be inconvenienced. We will do everything we can to meet your con-

venience. But we cannot do anything more than that.

The Special Master: May we proceed?

Mr. Hayes: I thought you were waiting to hear. The Special Master: No. Let's go ahead with cross-examination.

## Cross examination (cont'd) by Mr. Hayes:

- Q. Mr. Rummel, is there any other department that you can recall that made recommendations with respect to the acquisition or use of aircraft, any department in TWA?
  - A. I don't recall any.
  - Q. Did the Finance Department?
- A. The Finance Department participated on some occasions in the development of recommendations.
  - Q. Will you explain that, please?

[Tr. 548] A. I mentioned earlier that at times we would meet on special problems with the specially assigned groups to consider various facets of fleet planning.

In some of these instances the Finance Department representatives were included.

- Q. Does the Finance Department make recommendations to management?
- A. In these cases, recommendations that would flow from the group would include Finance Department considerations.

I can only speak with respect to my vantage point in the company. Whether they made other recommendations independently or not, with which I am not familiar or don't recall, I can't testify.

Q. You were not intimately familiar with the operations of the Finance Department?

A. No.

- Q. Do you know whether or not they made studies of the ability of TWA to acquire aircraft?
  - A. Well, I believe they did on occasion.
  - Q. Were you any part of those studies?
- A. I don't recall being a part of them, no. Undoubtedly some of our studies reflected in some of those studies.

[Tr. 549] Q. What do you mean by that?

- A. Just that.
- Q. Will you explain, please?
- A. Well, the Finance Department had primarily to do with financing as opposed to planning, although, as I said, they participated to some degree in the planning exercise.

With respect to financing, they would use the results to some degree of the planning studies.

- Q. Could you give us an illustration, so I will be able to understand what you mean, Mr. Rummel?
- A. Well, presently, for example, the five-year corporate plan includes five years of projected equipment programming.

In arriving at that plan, finance inputs are received. Once the implementation of the plan is undertaken, any associated financing with respect to that implementation reflects appropriately those parts of the plan that are needed to be reflected in the financing exercise.

Q. Is the Financing Department bound by the recommendation your group makes as to how many plans should be acquired?

A. No, I wouldn't say so, per se.

Q. They may recommend that TWA can or cannot finance such a number of aircraft; is that correct?

ITr. 5501 'A. If it should come to the position today that we shouldn't buy airplanes because they couldn't be financed, I am sure they would say so.

- Q. Let us go back now to 1956. What recommendations, if any, did Finance make with respect—in 1955 and 1956—to the acquisition of jet aircraft?
  - A. I don't recall their having made any.
- Q. You don't know whether they did or didn't, is that
  - A. I don't recall their having made any.
  - Q. Do you recall that they did not?
  - A. I just simply don't recall that they made any.
- Q. Were you aware of all recommendations on equipment made to TWA management?
  - A. By everyone?
  - Q. Right.
  - A. At every turn of events? Oh, I doubt that.
- Q. Specifically in 1955 and 1956, were you aware of all recommendations that may have been made on equipment to TWA management?
  - A. I doubt that.
- Q. Up to early 1956, Mr. Ralph Damon was president of TWA, was he not?
  - A. Yes.

[Tr. 551] Q. Did he interest himself-

- A.—Up to—he was president in 1956 and some preceding few years.
  - Q. Yes, several years.
  - A. Yes, five years.
  - Q. He died in early 1956, if I recall correct?
  - A. Yes.
- Q. Did he interest himself actively in matters of equipment for the airline?
  - A. Yes.

- Q. Did he consult with you directly with respect to equipment for the airlines?
- A. Not as frequently as Hughes, but we were in touch, yes.
  - Q. Did he always follow your suggestions?
  - A. No.
- Q. Do you recall any particular recommendations you made to him while he was president with respect to the acquisition of jet aircraft?
- A. No, I don't. Well, excuse me. I did recommend to him that the preferred type airplane would be Boeing airplanes.
- Q. Is it a fact that until you became vice presidentengineering and while you were chief engineer, your recom-IT. 552 mendations went to whoever was your predecessor in the office of vice president-engineering?
  - A. Not always.
- Q. Who was your predecessor in the position of vice president—engineering?
- A. Well, there wasn't any. There was a vice president—engineering which—whose office was abandoned when he left the company. That position, as such, was recreated which I became, vice president—engineering.
- Q. In that interim, to whom did you make your recommendations?
  - A. To my boss and a selected management group.
  - Q. Who was your boss?
  - A. Mr. Koepnick.
  - Q. Who was the selected management group?
  - A. Top management.
  - Q. Did you report to Mr. Collings?
  - A. Did what?

- Q. Did you report to Mr. Collings?
- A. Did I?
- Q. Did you report to Mr. Collings?
- A. Not when I reported to Mr. Koepnick.
- Q. He left some time before you became vice president engineering, did he not?

[Tr. 553] A. Yes.

- Q. Did you then report to Mr. Collings?
  - A. Yes, I did.
- Q. When Mr. Damon was president, did he, too, make suggestions with respect to equipment?
  - A. We would have discussions, yes.
- Q. Did he ever make suggestions with respect to equipment?
- A. Yes.
- Q. As to specific types of equipment that should be acquired or considered for acquisition?
  - A. Yes.
- Q. Did he sometimes call on your group to examine particular planes in which he was interested by way of acquisition?
  - A. Yes.
- Q. Did you, during this period of 1955 to 1960, ever make any of your recommendations directly to the board of directors?
  - A. No.
  - Q. They always went through some superior and you don't know whether they got to the board or not?
    - A. They always went through some superior.
  - Q. Who made decisions as to the withdrawal of equip-
  - A. Well, I suppose here you are covering the entire gambit of the period or when Mr. Koepnick was there?

Q. No, I am covering the period covered in your statement, Mr. Rummel.

A. Well, much of the jet equipment was not delivered and some of it was disposed of in ways other than TWA receiving them. And if you are alluding to those kinds of decisions, this was outside of TWA. I have been, I thought, answering in the context of strictly what took place in TWA.

[Tr. 587] The Special Master: Any time you are ready, Mr. Hayes, you may proceed.

By Mr. Hayes:

- Q. In connection with your fleet planning as to which you have been testifying in determining the size and the type and number of new aircraft, would you list for us the various considerations to which you gave weight?
  - A. The aircraft, the competition-
- Q. By the aircraft do you mean such things as the operating costs of the aircraft?
  - A. All pertinent aspects.

(Tr. 588) The Witness: The aircraft, competition, routes, traffic growth characteristics, the impact on the airline and financial results. I should say forecasted financial results.

By Mr. Hayes:

- Q. By the aircraft, do you include there operating costs, purchase price of the airplane and cost of provisioning?
  - A. Yes.
  - Q. All those?
  - A. Yes.
  - Q. How about the cost of ground support equipment?
  - A. That was usually considered.

- Q. How about training costs?
- A. Those were usually considered.
- Q. When you speak of competition, just exactly what did you mean? Did you mean competitive routes or did you mean competitive aircraft or what did you mean?
  - A. I meant TWA competition.
- Q. I assume you meant TWA competition, but in what sense did you mean it, Mr. Rummel?
- A. I meant how competitive we would be as a result of a proposed program.
- Q. Are you referring to the aircraft which the com-[Tr. 589] petition would be using on the same routes? Is that what you mean?
  - A. That would be included.
  - Q. What else would be included?
- A. I meant competition broadly.
- Q. What else would be included besides the competitive aircraft in competition broadly?

Mr. Sonnett: There was some testimony on this, Mr. Brownell, at an earlier stage of this cross-examination, beginning particularly at page 263 and thereabouts of the examination.

This does seem to be repetitive, but perhaps Mr. Hayes does not intend to be at if very long.

Mr. Hayes: I don't.

- A. Well, the degree of feed provided by a competitor and the competitor's overall image in a specific market were factors as well as the services on a specific segment, for example.
- Q. I frankly don't know what you mean by the degree of feed. It may be a technical term that is clear to you, but it isn't to me, I am afraid.
- A. All right. Let me try to explain. If an airline has strong self feed, or feed from services provided by others

through, say, compatible schedules, that is, if [Tr. 590] on the direct route being considered, that route is fed traffic through these other means, then his ability to remain in that market or be strong in the market would be enhanced compared to the airline who did not have that amount of feed.

Q. Are there any other factors that are considered in the decisions on selecting the type and number of new aireraft? Let me suggest some.

Do you consider anticipated traffic growth?

- A. Yes, I say projected traffic growth.
- Q. That is what you meant by it I see.

How about the safety aspects?

- A. That is part of the single word aircraft, in my use of the term here.
  - Q. How about airport limitations?
  - A. That relates to airplane performance characteristics.
  - Q. How about the availability of delivery positions?
  - A. That I relate to the competitive aspect.
  - Q. What did you mean by impact on the airline?
- A. Things like need for additional maintenance and overhaul facilities, need for enlarging or changing terminal concepts.
- Q. Did you consider technological improvements in ITr. 5911 the aircraft being considered by manufacturers?
  - A. Yes.
  - Q. What weight did you give to them?
- A. I included that in the term aircraft. We gave them the weight that we judged to be due in each instance.
- Q. If you anticipated a substantial breakthrough, did it mean that you might postpone getting new aircraft until a major improvement came along?
  - A. Those were a legitimate consideration.

- Q. And it could result in a postponement of the acquisition of existing aircraft?
  - A. It could, yes.
- Q. You mentioned forecasted financial results. Do you mean results of operation of the aircraft?
- A. Well, broadly, yes, as a result of having acquired and used the airplanes.
- Q. What about the company's financial condition, ability to make the purchase?
- A. That was a consideration primarily given by the finance organization.
  - Q. But it was always a consideration, was it not?
- A. Certainly. It was always a consideration in those cases where TWA ordered the airplanes.
- Q. Did you participate in negotiations on price with ITr. 5921 respect to the jets?
  - A. To some degree, yes.
- Q. Who carried on the negotiations primarily with respect to price?
- A. I believe that Mr. Hughes did primarily with respect to the basic price, and I did primarily with respect to changes in the price.
- Q. Generally speaking, were either you or Mr. Hughes able to negotiate successfully on price!

Mr. Sonnet: I don't know what that means.

The Special Master: I wonder if you could

clarify that?

# Mr. Hayes: All right.

## By Mr. Hayes:

Q. Do you recall any instance where either TWA or Hughes was not able to negotiate to get better prices on aircraft?

The Special Master: Does that mean lower prices than the original offering price?

Mr. Hayes: Lower, yes.

A. No, I don't believe so.

Q. Do you recall whether there were instances where TWA was not able to acquire aircraft because of inability to finance?

ITr. 5931 A. Yes. Not in this particular period. I am going back to the early piston days now.

Q. In this particular period, the orders were placed by the Hughes Tool Company, were they not?

A. Yes, sir.

Q. Is it your testimony that TWA would have been able to place the orders and finance them?

Mr. Sonnett: Just a moment. There is nothing in this witness' direct, Mr. Brownell, that bears on the question of TWA's ability to finance these aircraft, nothing whatsoever. I think that counsel is going far beyond the scope of the direct here.

Mr. Hayes: The whole assumption-

The Special Master: Are you objecting?

Mr. Sonnett: Yes, I object.

The Special Master: Objection sustained.

I think you can get what you want by rephrasing your question.

Mr. Hayes: May I have the question again, please?

(The question was read.)

The Special Master: Do you want to relate it to specific transactions?

[Tr. 594] Mr. Hayes: All right.

## By Mr. Hayes:

Q. Is it your testimony, Mr. Rummel, that TWA in 1956 was financially able to order the Boeings it did order and to make the down-payments and undertake to make the stage payments?

Mr. Sonnet: Read the question back, please. (The question was read.)

Mr. Sonnet: There is no evidence that TWA ordered any Boeings in 1956, Mr. Brownell. The question, therefore, improperly states the record.

Mr. Hayes: I am sorry. Did I say TWA!

Mr. Sonnett: Yes, you did.

Mr. Hayes: I meant Toolco. Let me rephrase the question. I am sorry. That was a slip of the tongue.

The Special Master: Do you understand the question or do you want it—

The Witness: I think I understand it. He is asking me whether I thought in 1956 that the Hugher Tool Company was able to finance the jets that it had ordered.

Mr. Hayes: No, that is not my question.

## [Tr. 595] A. No.

- Q. No. I will try it again, Mr. Rummel. Is it your testimony that in 1956 TWA would have been financially able to order the Boeings the Toolco ordered and to make the required down-payments and to make the required stage payments.
  - A. I haven't testified to that point.
- Q. You have said that TWA should have ordered the planes, have you not?
  - A. Yes.

Q. Do you mean that it should have ordered? Did you consider its financial ability when you stated in your direct case that TWA should have ordered them?

A. I have no reason to believe that that would not have been the case under the premise of the testimony.

Q. Would you explain what you mean? Frankly, I don't understand what you are saying, Mr. Rummel.

The Special Master: Do you have an opinion as to whether or not TWA was in a position to finance the acquisition of these planes? Do you have an opinion?

The Witness: I don't think I have an opinion that's sufficiently valid to present, no.

Mr. Sonnett: I think the witness was attempting to distinquish, Mr. Brownell, between two [Tr. 596] things: First, TWA, as it actually was when it was dominated by the Tool Company on the one hand, and, secondly, the hypothetical free TWA which was a premise in his testimony.

The Witness: That is absolutely correct.

## By Mr. Hayes:

Q. Where do you state the premise in your testimony, Mr. Rummel?

Mr. Sonnett: What is the question?

(The question was read.)

Mr. Sonnett: I don't recall the witness having testified that he did state the premise. I thought the witness was referring to an effort earlier to answer a question of yours.

Mr. Hayes: May we have the record read back, Mr. Brownell? I think it is pretty clear.

The Special Master: Yes.

Mr. Hayes: You have to go back two or three ques-

(The record was read.)

Mr. Hayes: So I asked where the premise was stated in his testimony.

Mr. Sonnett: I am referring not to the di-[Tr. 597] rect testimony. I am referring to what you have elicited or tried to elicit from him before, as I understood you.

## By Mr. Hayes:

Q. Are we in agreement, Mr. Rummel, that you don't state any such premise in your testimony?

The Special Master: In the prepared testimony! Mr. Hayes: In the prepared testimony.

A. Yes.

Q. You have no opinion as to whether or not TWA would have the financial ability to finance the aircraft that Toolco, in fact, ordered?

Mr. Sonnett: I don't like to be persnickity, but this is a fairly important question.

Mr. Hayes: It certainly is.

Mr. Sonnett: Would you read it back? I don't think you said exactly what you meant to say, but read it back, Mr. Reporter.

(The record was read.)

Mr. Sonnett: Would have or would have had! The Special Master: Would have had.

Mr. Hayes: Would have had, yes.

The Special Master: That is TWA as it exister. 5983 ed at that time.

Mr. Hayes: Right.

A. No.

- Q. You have no opinion?
- A. No.
- Q. Is that true both of the orders placed for the Boeings and the orders placed for the Convairs?
  - A. Yes.
- Q. Were there occasions in connection with the acquisition of aircraft where the Toolco and TWA worked together to create a competitive situation between aircraft manufacturers?
  - A. Yes.
- Q Did that activity on the part of TWA and the Toolco generally result in reduced prices or improved airplanes?
  - A. I think so.
  - Q. That is your best recollection, is it not?
  - A. Yes.
- Q. Can you give us an instance of such competitive situations that were created by the Toolco and TWA!

Mr. Sonnett: Mr. Brownell, I must say all I can read into this is that counsel is going back into the 16 days of discovery deposition. I don't know what this has to do with the witness' direct, [Tr. 599] how it constitutes cross-examination with respect to this testimony.

Mr. Hayes: This is a damage hearing.

Mr. Sonnett: I understand that, but I don't see that this is proper cross-examination of this witness, whatever contentions, if any, you may wish to advance at some other time.

Mr. Hayes: This is the man held forth as an expert on acquisition of aircraft.

Mr. Sonnett: That is correct.

Mr. Hayes: I want to find out what happened.
Mr. Sonnett: I don't see what your pending
question has to do with his direct testimony at all.
The Special Master: I will let the question stand

## By Mr. Hayes:

- Q. Do you recall the question, Mr. Rummel?
- A. No, I am afraid I don't.
- Q. The question, so the reporter won't have to search for it, was, in substance, that you give us instances of competitive situations created between aircraft manufacturers by the Toolco and TWA.

The Special Master: In which he participated or of which he has direct knowledge.

ITr. 6001 Mr. Hayes: Of which he has knowledge.

- A. This is limited to 1958 through 1960 still?
- Q. No. I am covering your testimony now, from the time you were with the company.
- A. The Martin Convair acquisition, the DC-6/6B-Connie competition, succeeding models of Connies, including the long bodies, as they are now called, Connie versus the DC-7.

Those are three examples.

[Tr. 601] Q. Was the effort in each instance to get a superior aircraft at a lower price for TWA?

- A. No, that was my effort.
- Q. Was it the effort of the Tool Company so far as you know?
- A. As far as I knew the effort was in that direction, yes. I can't presume to know everything that went on, but this is certainly the impression that I had, yes.
- Q. When an airline has certain kinds of airplanes, is it generally better to order, if it needs additional airplanes,

those of the same general type as it presently is operating rather than to operate several different kinds of airplanes?

- A. It is not a foregone conclusion. That consideration is a valid one which must be analyzed and carefully weighed among other considerations.
- Q. Is it true that generally speaking at least the cost of provisioning ground suport and flight training is less if you order additional aircraft of the same type than to order a totally different kind of aircraft?
- A. As a generality—
  - Q. That is what I asked.
- A.—that could be generally expected to be true. [Tr. 602] Frequently, of course, it is offset by revenues.
  - Q. That may be.
  - A. Yes.
  - Q. It is an important consideration, is it not?
- A. It is a consideration whose importance depends on the circumstance.
- Q. I meant to ask this question this morning. I may have asked this before, but I don't remember it. I just don't recall whether I did or not. It was on my mind and I forget all about it.

Would you define the term configuration for us, please, configuration of an airplane?

- A. Configuration of an airplane?
- Q. Yes.
- A. I use it generally as indicating the design of the plane.
- Q. You mean the external and internal design of the
- A. Yes.
- Q. Is there a difference between the configuration of the airplane and the configuration of a cockpit?
  - A. Well, the cockpit is part of the airplane.

- Q. I know it is. Thanks, just the same.
- A. I'm sorry. I—I don't mean to be flip at all.

  [Tr. 603] The Special Master: Your answer is yes, air.
- Q. What I mean is this: Might there be two planes of identical figuration speaking generally and yet the cockpit configuration from one airline running that plane would be different from another airplane running that plane?
  - A. Yes, that's true.
  - Q. So they might have a different cockpit configuration?
  - A. Yes.
- Q. Even though the plane itself might be the same over-
  - A. Yes.
  - Q. —as the same plane operated by another airline?
  - A. Yes.
- Q. That's really what I had in mind in asking you about the cockpit.
  - A. I see.
- [Tr. 604] Q. Do cockpit configurations vary among different air carriers?
  - A. Yes.
  - Q. Substantially?
  - A. In some cases.
  - Q. Has TWA a configuration all its own of the cockpit?
- A. Well, there are differences between the TWA cockpit configuration and other airlines and there are also great similarities.
- Q. Do you know of any other airline that has an identical cockpit configuration to that of TWA?
  - A. Yes, for a while, Northeast.
  - Q. What airplanes?
  - A. The Convair 880s.

- Q. The ones that were eventually leased to Northeast that had been built on TWA configuration originally?
- A. That is correct.

There may have been some minor changes that have crept in. I'm not sure now. But the cockpits are essentially identical.

- Q. Aside from those which had originally been built for TWA configuration do you know of any airline that operates aircraft with the same cockpit configuration [Tr. 605] as TWA?
  - A. I don't know of any that are entirely identical.
- Q. Did TWA engage in development work and prelimiary design on new aircraft looking toward the acquisition of new aircraft?
  - A. Yes.
  - Q. Did it do more such work than other airlines did?
- A. Well, I really—I don't think I'm in a position to testify precisely what all the other airlines did in this respect.
- Q. Was Mr. Hughes personally interested in development of new aircraft for TWA?
- A. He was certainly interested in the development of new aircraft and I had the impression that he had TWA in mind.
- Q. Do you know of any other airline that he ever had in mind in the development of new aircraft?
- A. Well, on the—not specifically, but I think the answer is yes.
  - Q. Tell us about it.
- A. Well, for example, on the Caravelle undertaking that was proposed, the idea was to build into a production ITr. 6061 situation starting with TWA but hopefully selling to other airlines.

- Q. That was a proposal that was made back in what, mid-'50s somewhere'?
- A. Well, that was—give me half a second. I'll think I believe in the mid-'50s. I don't recall the exact date now.
- Q. Was that a plane that had been developed at that time by Sud Aviation in France?
- A. The plane had been developed, yes, and would have been the first of the series to have been produced.
  - Q. Who developed this Caravelle?
  - A. Sud Aviation.
  - Q. Did TWA work on the development of it?
  - A. Not at that time.
- Q. Did it later work on the development of the Caravelle?
  - A. Yes.
  - Q. When?
  - A. Well, after the period we are talking about.
  - Q. You mean in 1961?
  - A. Yes.
  - Q. I am thinking of the period up to 1961.

[Tr. 607] A. Yes.

- Q. Did Mr. Hughes work on the development of the Caravelle?
  - A. Not as far as I knew.
- Q. My question to you before, Mr. Rummel, was did you know of any plane in the development of which Mr. Hughes worked which was intended for an airline other than TWA?

Mr. Sonnett: That is a new question.

Mr. Hayes: That is the question I asked before but let's not argue about it.

Mr. Sonnett: I don't think so.

The Special Master: Are you clear as to what the question is now?

The Witness: I am new, yes. The Special Master: All right.

- A. I know that some of the jets wound up with other sirlings.
  - Q. Are you talking about the 880s and the six-331s?

A. Yes.

# ITr. 635] By Mr. Hayes:

Q. Mr. Rummel, on Friday last you testified that you agreed with the statement on page 6 of your prepared statement that TWA and Toolco recognized that in order for TWA to maintain its competitive position, it would require a fleet of jet-powered aircraft substantially as soon as its principal competitors and that orders for such equipment should not be delayed.

Please state the facts which are the basis of the agreement to which you testified.

A. Both Mr. Hughes and I worked diligently and hard through 1954 and 1955 to have aircraft developed which would satisfy TWA's needs.

It was recognized that TWA would have to be fully competitive in the jet age, and that the jets would likely prove to be a superior mode.

Q. Would have to be what?

A. A superior mode of transportation, which we would have to have in order to be competitive.

During the fall of 1955, there were numbers of discussions with Mr. Hughes, during which it was recognized that TWA would have to be equipped and Toolco should proceed expeditiously with the placing of orders for jet air-Tr. 6361 craft.

Q. Have you finished?

A. Well, at that point discussions with Boeing were given new life, and negotiations undertaken which led to the development and signing of the contracts early the following year.

Q. You used the expression it was recognized that TWA would have to be competitive.

Recognized by whom?

Mr. Williams: If your Honor please, Mr Special Master, it seems to me that that is an expression that was perfectly proper and he does not have to state by whom it was recognized.

The Special Master: I will allow the question.

Mr. Williams: Can you answer it? Go ahead

- A. Well, I was going to say I believe everyone at least involved with me in the jet picture certainly recognized it
  - Q. Can you give us names, Mr. Rummel?
- A. Well, Mr. Hughes did, I am sure Mr. Damon did Wait a minute. It could not have been in the fall. It would have been earlier, and when Damon was there he was IT. 6371 acutely aware of the need of our remaining competitive. I did. My associates did.
  - Q. Could you name them, please?
  - A. Mr. Rourke, for example.
  - Q. Any others?
- A. There was widespread concern, Mr. Hayes, that if TWA did not find itself in position to remain competitive in the jet age, we would be operating at a disadvantage, and that orders would have to be placed in order to place us in the desired position.
- Q. You said it was recognized by Mr. Hughes, for one. What did he say to you in that connection in the fall of 1955!

A. Specifically—well, I certainly at this stage can't presume to give a verbatim account of a detailed conversation due to the passing of time.

The order for the 131s was intended, as I recall it, primarily, initially, as he expressed it to me, as a stopgap, hoping that superior aircraft could be evolved in sufficient time to then give us a competitive advantage.

The entire thrust of our efforts technically was to have superior craft developed which would place TWA at a competitive advantage.

Tr. 6381 Q. You said that the order for the 131s, according to your recollection of what Mr. Hughes told you, was a stopgap, hoping for the development of superior aircraft which would give TWA a competitive advantage; is that correct?

A. Yes.

Q. When did he tell you that, according to your statement? The order was not placed until March of 1956.

A. This was during discussions between ourselves during the fall of 1955.

Q. So this remark by Mr. Hughes, as you recall, that it would be a stopgap, the first order for 131s, was made in the fall of 1955; is that correct?

A. It was expressed, as I recall it, during the fall of that year.

# (Mr. Sonnett entered the hearing room.)

Q. Can you identify the time more exactly?

A. It was around the time that the improved Boeing models were emerging and we were in the process of dropping the Model 18, or shortly following that. It was in that general period of time. I can't be specific as to the precise date, no.

[Tr. 648] Q. Who was Harry West?

- A. An attorney.
- Q. For whom?
- A. I believe the Chadbourne firm. I don't recall the full name.
  - Q. Whom did the Chadbourne firm represent?
- A. Well, they represented TWA, but West in these activities dealt directly with Hughes, and what his personal situation may have been or that of the Chadbourne firm, vis-a-vis Hughes, I am not certain.
- Q. Was the Chadbourne firm the general outside counsel of TWA at the time?
  - A. Yes, sir.
  - Q. Was Mr. West a partner in that firm?
  - A. Not at that time.
- Q. But did he handle negotiations looking to the acquisition of the Boeings with The Boeing Company?
- A. Well, he participated in them. I wouldn't say he handled them. There were other counsel and other lawyers involved from time to time.
  - Q. But he was an active participant?
- A. He was an active participant in those areas in which he was suitable to be active.
- Q. Do you recall anything Mr. Hughes said to you, ITr. 6491 other than what you have already told us, to the effect that Toolco should proceed expeditiously with placing orders?
- A. He also made it known that he—during this period of time now, he made it known that he was in touch with Boeing. Numbers of meetings took place between Hughes and Boeing, itself, or Boeing representatives. Some of these, I did not participate in.
- Q. Is there anything else that you can recall that he said to you?

- A. Not categorically at this time, no, sir, on that point.
- Q. For my own information, Mr. Rummel, you frequently use the adverb "categorically" in connection with your answers. In what sense do you use that, so I will understand your testimony?
- A. I mean that I am trying to answer your questions—I am trying to think of a synonym for "categorically"—"precisely," perhaps, is the right word.
- Q. I see. You have no precise recollection other than what you have already testified to as to discussions with Mr. Hughes to the effect that Toolco should proceed expeditiously with placing orders?

A. No.

- ITr. 6501 Q. Did Mr. Hughes in any discussion with you ever give you any reason why Toolco should place the orders rather than TWA?
- A. I don't recall that he did. I might say he wasn't in the habit of explaining all of his decisions to me.
- Q. Regardless of his habits, did he give you any reason?
   A. I don't recall a reason specifically expressed by Mr. Hughes.
  - Q. Do you recall them generally.
  - A. No.
- Q. Is it correct that you have no recollection as to any reason he gave you?
- A. He certainly may have, but I don't recall it at the moment.
- Q. You mentioned that after these discussions with Mr. Hughes that Toolco should proceed expeditiously with placing orders, that the discussions with Boeing were then given new life.

What does that mean? What was done? Give us the facts.

A. Well, Boeing had been pushing us steadily, and the new life was that we started to respond by negotiating.

ITr. 659] knowledgeable of actions of other airlines, their posture and procurement activities and that sort of thing.

I didn't attempt to try to recite each and every scrap and knowledge that existed. I'm sure some of it now I just don't remember.

- Q. I am asking you now to tell us if there are any other facts in your recollection than those you have already testified to which caused you to agree with the statement I read to you from your prepared testimony.
  - A. That's all that comes to mind.
- Q. You stated in your prepared testimony that in the fall of 1955, the development of jet aircraft reached the point at which TWA should have made definite commitments for a fleet of medium to long range jet aircraft which would be sufficient to meet TWA's initial needs for its domestic and international routes.

That sentence like the prior one is confined you notice to the fall of 1955.

What do you mean by the expression of "development of jet aircraft reached the point at which"?

What point are you talking about?

- A. At which initial orders could be placed.
- Q. What point in the development had been reached!
- A. Sufficiently definitive proposals from the manu-In.
  6601 facturers to warrant placing orders.
- Q. Had that point been reached by all manufactures at that time?
  - A. All manufacturers?
  - Q. That is right.
  - A. You mean all manufacturers of jets?

- Q. Yes.
- A. No.
- Q. It had not?
- A. No.
- Q. What manufacturers had reached that point in the fall of 1955?
  - A. Boeing, Douglas, DeHavilland.

Before then, Avroliner.

- Q. Would you tell us what you are referring to in con-
- A. Simply refreshing myself by looking at the list of aircraft attached to my testimony.
  - Q. You mean Annex A?
  - A. Yes.

Commercial version of the YB 60, some time before this.

- Q. What was the YB 60?
- A. The YB 60 was a large proposed commercial [Tr. 661] variant of an experimental swept wing jet bomber which in turn was derived from the B-36.
  - Q. Who was the manufacturer?
  - A. It was never manufactured.
  - Q. Who was the one who proposed it, the manufacturer?
  - A. Convair.
- Q. They had not reached the point of accepting orders, or had they?
  - A. Well, they sure acted like they were at that point.
    - Q. I am sorry.
- A. They sure acted like they were at the point of wanting to make a deal.
- Q. What other manufacturers had reached the point of usking for orders?
  - A. Sud Aviation, Vickers.

The Special Master: Is that the end of your answer?

The Witness: That's all I think of at the moment. I was taking time to search my memory, sir. Yes, that's all I think of.

- Q. Was Lockheed?
- A. Lockheed had done work on jet transports, some [Tr. 662] on their own but mostly under military contract, and had failed to elicit sufficient airline interest as I recall it now, to permit them to go ahead to the point of formally offering their jet aircraft.

They were deeply involved in the development of the Electra at this particular time, that is, the fall of 1955. And they had centered their attention on this.

- Q. When did they offer their Electra to the airline industry, do you recall?
- A. Not precisely, Mr. Hayes, but before the fall of this year. I mean before the fall of 1955.
  - Q. Before the fall of 1955?
  - A. When they first offered the Electra?
  - Q. That is right.
  - A. Yes.
- Q. So Lockheed was another manufacturer that was offering jet aircraft?
  - A. I do not consider the Electra a jet aircraft.
  - Q. What jet aircraft was Vickers offering?
- A. Well, at that time they were offering a commercial derivative of a bomber that was then under development or which possibly by that time had flown. I don't recall it that well in terms of exact timing.

(Tr. 663] They may have—in fact, I believe they did offer their jet prior to this time. It was—I have alresdy described it.

Q. Did it have a name or a designation of any kind?

A. I'm sure it did, Mr. Hayes. I don't recall at the moment exactly what it was called now.

Q. Did any airlines order the Vickers jet which was a commercial derivative of a bomber under development?

A. I can't be 100 per cent sure but I believe that BOAC had placed an order through the Ministry or possibly it was a Ministry order in behalf of BOAC. Whether BOAC in fact signed an order, I can't be that sure.

Q. Any other airline?

A. Nothing more comes to my mind.

Q. Was the plane ever built and flown by a commercial airline!

A. The project was subsequently canceled.

Q. You referred to medium and long range jet aircraft in the sentence to which I directed your attention.

Will you tell us which of the manufacturers were ordering medium and which were ordering long range jet aireraft, giving the designations, if you remember them?

The Special Master: Offering.

[Tr. 664] A. You mean offering for manufacturing or orders?

The Special Master: You mean offering rather than ordering?

Mr. Hayes: Yes, offering to the airlines.

The Special Master: That's distinguished now between medium and long range?

Mr. Hayes: That's right. I want to know which is which and which manufacturers were offering them.

A. You are speaking now of the fall of-

Q. That's right. That is what you are speaking of.

A. DeHavilland was offering a medium to long range airplane.

Boeing-

Q. Did it have a name or a designation?

A. It was called the Comet. However, there were several Comets.

Boeing offered the two that I mentioned, but during the term of the negotiation with Boeing for the aircraft that Hughes Tool ordered, we entered into discussions with Boeing toward getting them to offer a medium range plane.

They did make preliminary technical proposals, but these were not of sufficient interest to us to warrant [Tr. 665] their making a formal offer as such to build them.

Q. Whom do you mean by "to us"?

A. Those who were negotiating. Myself, associates. This was all tied in closely with the Hughes people.

Q. Did you mean TWA acting through you?

- A. I mean—I viewed TWA and Hughes in those days in this respect as being synonymous and I think they were.
  - Q. Yes, you have told us that.
  - A. Well, that's what I am referring to.
  - Q. But you are including TWA in the expression to us!
  - A. Yes.
- Q. What was Boeing offering? They were not offering this one that you are talking about. What were they offering?
  - A. Both the 100 and the 300 series.
- Q. And those are what TWA ordered as the 131s and 331s?
- A. Hughes Tool ordered them as the 131s and the 331. That is, the complete designation perhaps to make it more clear is 707-131 and 707-331.
- Q. Were they long range or medium range? Which were they?

Tr. 6661 A. Well, as I explained earlier, a couple of times, the 331 was suitable for international operations. The 131 was marginal for international operations and suitable for transcontinental operations.

Q. Did you consider it, the 131, as a long range airplane or a medium range airplane?

A. The 131 was capable of long range transcontinental non-stop operations, and quite capable of interim stops, coast to coast, and of course that's the way it was finally used.

Q. The 331s you would designate as long range?

A. I would place them as essentially long range international airplanes, again capable of economically being operated on some shorter segment.

Q. Did Boeing at that time offer any so-called medium range jet airplane as distinguished from the long range jet airplane?

A. Well, as I explained, we endeavored to get them to offer a medium range airplane, and they did not.

Incidentally, it was during the fall, and I guess that my conversations that I have been talking about dates—when I say the fall, I am talking about it started some time in the fall and then continued up until the time that we bought the airplanes. During this period [Tr. 667] Convair did offer the 880 which while it was intended as a transcontinental non-stop airplane, it was also intended to be capable of efficiently being used on a somewhat lesser range.

Q. But that was not available, was it, in the fall of 1955, not offered?

A. It depends—well—I would say it was offered, yes. It seems to me that when a manufacturer starts panting and pushing for the sale of an airplane, even though it is to some extent still being developed, it is indeed offered.

- Q. I am speaking of an aircraft that was not still being developed, but had been developed, for which aircraft manufacturers were seeking orders?
- A. Well, none of them, Mr. Hayes, were fully developed when they were ordered.
  - Q. You mean the configuration is not complete?
- A. I mean they weren't fully developed, at that point in time, any of them.
- Q. Was the Convair 880 in the same state of development in the fall of 1955, and I mean the fall of 1955 as the Boeing 131?
- A. The 880 as such, as I best recall it, came forward during December of that year.

ITr. 6683 Q. Offered as a plane for which the company was seeking orders?

- A. Offered as a plane and a concept of which Convair wanted to further develop working with Hughes and myself toward the sale of that general kind of airplane.
  - Q. Did they offer it to airlines generally?
- A. They had—well, some of the Convair people indicated they had shown early design concepts to, I believe it was Northwest Airlines, around that time.
  - Q. This was the fall of 1955?
- A. Very late fall. I mean—as I say it was in December, as I best recall, that the 880 came forward. So it was December and subsequent.

## By Mr. Hayes:

- Q. What long range and medium range jets was Douglas offering to airlines in the fall of 1955?
- A. As I recall, Douglas took the dual model approach about the same time that Boeing did, but [Tr. 669] there was less difference between their models.

They had a JT-3 and a JT-4 powered airplane.

- Q. Are you referring to engine numbers now?
- A. Yes, sir.
- Q. What were the plane numbers or the plane designa-
  - A. DC-8s.
  - Q. All DC-8s?
  - A. DC-8.
  - Q. What was the DC-8, long range or medium?
  - A. DC-8.
  - Q. I thought I said DC-8.
  - A. I am sorry. I thought you said "A".
- Q. Was the DC-8 a long range or medium range plane, the one that Douglas was offering in the fall of 1955?
- A. The JT-3 powered DC-8 was roughly comparable to the 131 and the JT-4 DC-8 roughly comparable to the 331.
- Q. So the DC-8 with the JT-3 engine was capable of transcontinental flight?
  - A. Yes.
- Q. The DC-8 with the JT-4 engine was capable of making intercontinental flights?
- A. Yes, this was the concept of the planes that [Tr. 670] were offered.
  - Q. These planes were not flying at that time, were they?
  - A. No.
- Q. Would you call them both long range planes?
- A. Pd put them in the same category that I just put the Boeings in respectively.

Q. What jets was Avro offering at that time?

A. Well, at that time, we were still working with Avro, as we had been for some time on a supersonic type plane.

It was early in development and had not reached the stage where anything other than those preliminary type agreements could have been entered into.

- Q. Was there any other jet it was offering to airlines at that time?
  - A. I mentioned the Comet.
  - Q. That was DeHavilland, I thought.
  - A. Yes, sir, maybe I misunderstood your question.
  - Q. I am talking about Avro.
  - A. Avro?
- Q. Was there any other jet airplane that Avro was offering to airlines at that time?
- A. The Avro I referred to is Avro in Canada. I ITr. 6711 am trying to recall whether Avro in England at that time offered anything.

At the moment, I don't recall this, although at one time I believe they did.

Q. You do not know then as you sit here now

A. It was not an especially serious contender and I don't recall exactly when that was.

Q. When you said we were working with Avro you refer again to both yourself and to Mr. Hughes in behalf of TWA or do you have somebody else in mind?

A. Well, on behalf of TWA, I don't know how to bracket that. I say that Mr. Hughes and I were working directly on the Avro project, meaning Avro Canada—

Q. Yes.

A. —through this period. As I explained earlier this wasn't a constant high heat affair but it was a continuing series of discussions, reviews, explorations with Avro.

- Q. Was it part of the exploration or efforts that you testified before which were directed toward getting a superior jet aircraft for TWA?
  - A. I certainly so understood it at the time.
- Q. Was this Avro supersonic that was then on the drafting boards ever built and sold to airlines?

[Tr. 672] A. No.

- Q. I do not know whether I asked you before when you mentioned the YB-60 of Convair, was that ever built and sold to airlines?
  - A. No.

And as I said, that was prior to this fall period.

- Q. Sud Aviation was offering what airplane at that time?
  - A. The Caravelle.
  - Q. Was that a long range or a short range jet?
  - A. That was short range.
  - Q. Or was it medium range?
- A. This is almost anybody's definition. It was capable of somewhat, I would call, medium range flights, yes.
- Q. In your prepared statement, when you talk about TWA making commitments for a fleet of medium to long range jet aircraft in the fall of 1955, what specific aircraft did you have in mind in your statement that TWA should have made commitments for?
- A. Well, I looked upon the jet developments as including the family concept.

At that particular time, we, had my recommenda-[Tr. 673] tion been followed technically, would have bought Boeing planes. That would not, however, have fully satisfied the medium range requirement.

- Q. Is that your answer?
- A. Yes, sir.

Q. What do you mean by the phrase "family concept"? You said you looked upon jet development as including the family concept.

A. Well, for example, as I mentioned earlier during our Boeing negotiations we attempted to persuade Boeing to develop a shorter range airplane, an airplane designed and optimized in a different way.

Boeing, in fact, later did develop a derivative model but

they did not do so or offer it at that time.

And I was confident that these initial jets, contrary to some other opinions that existed at the time, would be developed into a family series.

Q. Would you please tell us what you mean by a family concept or a family series? It is not clear to me and I would like the record to be clear as to what you mean by those phrases, Mr. Rummel?

A. I'll try to make it very clear.

I am talking about developing derivative designs from existing designs which make use of earlier [Tr. 674] developments.

The Special Master: May I ask would for example the Boeing 707-300 family be one that included the 331?

The Witness: Well, the answer is yes. That certainly was an early manifestation of the family concept.

The Special Master: And the 100 is a separate

family

The Witness: No, I'd say the 100 and the 300 were the members of the same family series as later was the 720 airplanes. They essentially used the samewell, basic state of the art, the same tooling, to the extent that they could, and the attempt in these cases

is made to use as much of the earlier non-recurring costs, spreading them over a new series as they could, you see.

ITr. 6771 Q. I will go back to the question I put before which got us off on this family concept.

What specific planes, medium and long-range, did you have in mind when in your testimony you stated that in the fall of 1955 TWA should have made definite commitments?

Can you identify the planes you are talking about?

- A. Well, I would have ordered Boeing airplanes.
- Q. Both 131s-
- A. And 331s.
- Q. -and 331s?
- A. Yes. And I would order either or attempt to order either a shorter range—whatever it was—actually either Boeing or Convair, except Convair in fact didn't exist in the fall. It wasn't until later that it appeared.
- Q. You did not have the Boeings in mind because the Boeing was not available, is that correct?

Mr. Sonnett: Just a moment. Read that question back.

(The question was read.)

- A. The Boeing was not available?
- Q. The Boeing medium range. You said that you ITr. 6781 tried to get them to build a medium-range and it never got beyond the point where it was feasible. You testified to that already.

So you did not have a Boeing medium-range airplane in mind in the fall of 1955 that should have been ordered, did you?

- A. We had a medium-range airplane in mind all right.
- Q. Which one was it?
- A. What I said was we weren't successful as a result of our negotiation with Boeing to have Boeing proceed.

The airplane they offered in my analysis just wasn't good enough to warrant proceeding.

- Q. You did not consider that airplane then as one that should have been ordered in the fall of 1955, did you?
- A. Not in the form it was offered, conceptually I think it was
- Q. You are talking about placing of orders here that should have been placed. You just told us that the Boeing medium-range was not the kind of a plane you wanted. I am not thinking about concepts. I am thinking about models that were being offered to airlines at the time for manufacture and for use by the airline.

I ask you if in your testimony or if it is your ITr. 6791 testimony that in the fall of 1955 TWA should have made definite commitments for the Boeing medium-range which did not measure up to your requirements.

- A. It is my testimony, Mr. Hayes, and what I am saying here is that in my judgment that would have been the time that we should have moved in this area.
  - Q. What does that mean?
  - A. Exactly what I say.
  - Q. What do you mean by move in this area?
  - A. Place—what the testimony says.
- Q. That in the fall of 1955 TWA should have placed orders—I will take your own language—make definite commitments for a medium-range Boeing with which you were not satisfied, is that correct?
- A. I am not suggesting that we should have ordered the airplane if we weren't satisfied with it.

I am saying that is the appropriate time to have ordered and I believe that we could have had a satisfactory proposal had we concentrated on it instead of other matters at that time.

Q. When did Boeing develop a medium-range plane and really offer it as a medium-range plane for orders by the airlines?

A. I said many times that they regretted not having ITr. 6801 moved when we initially wanted them to move.

They did offer such a plane pretty much as a direct result of the Convair 880 offer. The exact time of this offer, the date it was formally offered I just don't recall at the moment.

- Q. Was it in the fall of 1955?
- A. No, it was after.
- Q. It was after?
- A. Yes.
- Q. I am talking about your testimony which is confined to the fall of 1955, Mr. Rummel.
  - A. Well, that's what I am talking about.
- Q. I would like to get an answer to the question as to whether it is your testimony that in the fall of 1955 TWA should have ordered from Boeing a plane that Boeing had not yet offered to the airlines.

Mr. Sonnett: I think that question has been answered. This is just sheer argument, Mr. Brownell.

The Special Master: Sustained.

ITr. 684] • • • Q. Can you identify the Hughes representatives to whom you made your recommendations in the fall of 1955;

- A. I mentioned on numbers of occasions to Mr. Cook that I felt that we should proceed with the placing of orders.
  - Q. Anybody else?
  - A. Well, to Mr. Hughes, of course.
  - Q. You mentioned him.
  - A. Yes.
- Q. Is there anybody else in Toolco to whom you made your recommendation?
- A. Well, it is quite likely and possible that there were others, but I don't recall categorically right now who they were.
- Q. To whom in TWA did you make your recommenda-
  - A. Mr. Damon.

I'm sure I mentioned my feeling on several occasions to others such as Mr. Cocke, but I don't specifically recall the occasion.

- Q. What were those recommendations that you made in the fall of 1955?
- A. That orders be placed for jets so that we could ITr. 6851 achieve either first or contemporary delivery with others.
  - Q. Did you make any other recommendation?
  - A. Well, that certainly was a primary one.
- Q. Search your memory, Mr. Rummel, and see if you can elaborate.
- A. Well, I specifically recommended the Boeing aircraft at that time versus Douglas and versus the Comets.

The Special Master: At this time, did you put in a recommendation as to specific number?

The Witness: Gee, undoubtedly we talked numbers, Mr. Brownell. I'm not that specific.

I don't know why I would have not used the same numbers.

- Q. Do you recall the numbers that you used in the fall of 1955?
- A. Well, the number of 331s that came into being was 18. I don't recall deviating from that.
  - Q. That came into being in 1956, did it not?
- A. Well, these—no. It came into being in terms of being reflected in a contract in 1956.
  - Q. I am asking you-

Mr. Sonnett: Let the witness finish. Don't interrupt. Every time the witness starts to give him a responsive answer, he interrupts.

ITr. 6861 Mr. Hayes: That is one of the most unfair statements Mr. Sonnett has made. And he is a champion at it.

Mr. Sonnett: Maybe it is unfair in your eyes, but I am accurate about it. Why don't you let him finish his answer?

Mr. Hayes: I have been most careful to let Mr. Rummel finish.

Q. Would you proceed, Mr. Rummel?

Mr. Sonnett: Would you take the question fresh and go ahead and answer it?

(The question was read.)

The Witness: In terms of becoming a target for inclusion in the contracts, I'm not sure exactly the time that that came into being, but I think it was—I believe it was during the fall of 1956.

Mr. Sonnett: What year?

The Witness: I am sorry. 1955.

Q. Can you tell us now as you sit there, Mr. Rummel, what specific recommendations as to numbers of planes you recommended to either the Toolco or a representative of it or to anyone in TWA in the fall of 1955?

A. Well, in the fall of 1955, I was dissatisfied with the nine and later a larger number of 131s, because [Tr. 687] I was convinced that things like the supersonic Avro simply would not be sufficiently timely, that is, that we couldn't wait on it, the price would be too great.

So I was pushing for a larger number of 131s during the negotiation, that is, with our own people.

The specific numbers that we, in fact, were dealing with were reflected in various studies, and I don't specifically recall at the moment.

However, it was my view that about 18 was right on the 331s, and that we should have more than the nine 131s.

- Q. Do you have any recollection as to how many more you recommended?
- A. Well, the number we came to is 15, and I recall specifically indicating that it would be desirable to have more than the 15 at the time the 15 agreement was achieved. That was in the spring or the very early winter of 1966.
  - Q. Do you mean 1957?
  - A. 1956. I mean in the early part of that year.
- Q. That the 15 were ordered in the spring of 1956, do you testify?
  - A. No, I'm saying-

The Special Master: The winter of 1956 ITr. 6883 means the winter of 1956-1957?

The Witness: Well-

The Special Master: When you said early in the winter you meant winter of '56-'57?

The Witness: I am only referring to the fact that—yes, yes, that would have been in the following year. Yes, that's right.

- Q. You referred to studies you made that reflected these
  - A. We made numbers of studies relating to jet fleets.
- Q. Did I understand your testimony—I will tell you what my understanding was—tell me if I am correct or not—I understood you testified that the numbers which you had in mind in the fall of 1955 were reflected in studies you then made. Did I misunderstand you or not?
- A. Well, there were many studies made, both before, during and after Hughes placed specific orders for airplanes.
- Q. Is that your answer? I don't want to be charged with interrupting you.
  - A. I think that's responsive.

Mr. Hayes: May we have the question repeated to the witness?

Tr. 6891 The Special Master: I think it was in the fall of 1955 were your recommendations as to specific numbers of planes reflected in studies. That would mean studies then in existence.

The Witness: Well, certainly not in all studies.

Some of the studies, to explain, were aimed at determining which the better plane was, Douglas versus Boeing versus others, and in some of those studies which would take various fleet sizes, sometimes on direction from Hughes, sometimes we would decide what a reasonable size fleet would be and evaluate them on a comparative basis.

I am a little vague as to exactly the detail of studies made now at that particular point in time.

# By Mr. Hayes:

Q. What I am trying to find out, Mr. Rummel—I will phrase it as simply as I can—as to whether in any studies

you or anyone working for you made in the fall of 1955 there was a recommendation by you as to how many Boeing airplanes of what types should be ordered.

A. Well, I'm sure that that was included, but I ITr. 690 don't recall the specifics at the moment.

Some studies were—included as many as 25 131s, for example.

- Q. Do you mean that you were recommending 25?
- A. I would have to refer to the studies now to remember exactly and precisely what each of the studies may have said then.
- Q. I am not asking you what studies you made, Mr. Rummel.

I am trying to find out what recommendations you made. You testified previously that your recommendations were contained in studies then made.

- A. I didn't intend to limit the answer to—in order to suggest that the only recommendations that I made were in studies. Many of these things were handled verbally, Mr. Hayes.
  - Q. May I proceed?
  - A. I am sorry, if I interrupted you.
  - Q. I will start over again.

You have testified that you made recommendations as to numbers of planes, both to Toolco and to TWA superiors.

You have also testified that your recommendations were contained in studies?

# [Tr. 691] The Special Master: Reflected.

Q. Reflected in the studies.

1 Supplied the And of the

Whatever the studies were, can you now identify for us any study made by you which contained a recommendation

as to the number of Boeing jets that TWA should then order?

Mr. Sonnett: For an initial order or for the entire fleet contemplated? That is where the problem is. Mr. Hayes: There is no problem at all. I press

my question, Mr. Brownell.

Mr. Sonnett: Answer it both ways if it is necessary to answer it.

A. Perhaps this will help. I enthusiastically recommended that we proceed with the Boeing orders. First, the order for nine and then the order for the larger numbers.

I recommended we proceed with the order of 18. I do not remember being satisfied with the—at the time with the orders for the 131s. I kept pressing for more airplanes and better deliveries.

Q. This was all in the fall of 1955?

A. Well, and up to the time the orders were actually placed.

ITr. 6921 Q. But I am trying to find out what the fact was in the fall of 1955. That is the time you fix in your prepared testimony.

My question is directed to that, Mr. Rummel.

Is that clear to you?

Mr. Sonnett: It is clear to him. I think he answered that.

Mr. Hayes: He answered with what happened in 1956. I want to find out about 1955. The fall.

Mr. Sonnett: Maybe if the Master asked him how these numbers were arrived at and when we might get a simple declaratory answer that would eliminate all the problems that you seem to have.

The Special Master: In the fall of 1955, what studies by you or under your direction that you can

recall recommended specific numbers of Boeing planes be ordered? Do you remember any studies that existed in the fall of 1955 which contained your recommendation as to a specific number of Boeing planes be ordered?

The Witness: I don't recall a specific study, Mr.

Brownell.

Mr. Hayes: Maybe instead of wasting a lot of time on this, I will ask the witness to produce [Tr. 693] any studies he made in the fall of 1955 which contained recommendations as to specific numbers of airplanes that should be acquired. That might be the easiest way to do this.

The Special Master: I think that is a good idea.

# By Mr. Hayes:

Q. Would you do so, Mr. Rummel?

Mr. Sonnett: We will take a look and see what there is and I will let you know, Mr. Hayes. I assume you want whatever studies the witness has in mind

Mr. Hayes: Which contain recommendations as to

specific numbers of planes.

Mr. Sonnett: We will find the studies that the witness has in mind and you can decide whether you want them or not.

The Special Master: Very good.

The Witness: I-

Q. Go ahead.

A. No, I was only going to try to explain that the—during these conversations with Hughes, I was attempting to persuade Hughes to move into Boeings rather than continue with these other investigations of designs [Tr. 694] which could only put off the day that it could receive airplanes,

and I was trying to urge that we move in with both feet with substantial quantities to protect our competitive position.

Q. Did you make those same recommendations to Mr. Collings and Mr. Damon?

A. Yes.

Q. You refer in that same sentence of your prepared testimony to a fleet of medium to long-range aircraft sufficient to meet TWA's initial needs for its domestic and international routes.

A. Excuse me.

To perhaps further clarify it, to go back to the early question, what I specifically recommended to Collings and Damon was that if they had the opportunity to try to persuade Hughes to the same kind of thinking that I had come to.

Excuse me, Mr. Hayes, for that insertion, but—could the question now be read?

Q. I don't think I finished the question, Mr. Rummel.

A. Oh, I see. I had my mind on this other thing.

Q. In your testimony you referred to the ordering of medium and long-range aircraft sufficient to meet TWA's ITr. 6951 initial needs for its domestic and international routes.

Will you please tell us what facts you knew in 1955 which indicated what would be TWA's initial needs for its domestic and international routes?

A. Well, we knew that Pan American and American were very actively negotiating with Boeing and Douglas.

We became satisfied, at least I did, that the placing of orders by them with one or the other or possibly both manufacturers was very imminent as the fall approached.

We later knew that orders, in fact, had been placed, not only by those airlines, but others.

It was a fact that we believed that the jets would prove to be a superior form of transportation, far out surpassing the pistons in appeal and in public receptiveness.

We knew that early delivery positions were in demand, that is, all airlines—at least all of the major airlines—viewed competition pretty much as we did, that is, that it was important to get a leg up on or at least be equal to the competitor.

We knew primarily from Boeing contacts that Boeing was ready to receive orders, or agreements which would lead to specific orders.

[Tr. 696] We also were familiar with the Boeing designs, and to a lesser degree with the Douglas designs.

We also knew how successful the early Comet operations had been with respect to public response.

That's all I think of.

# [Tr. 704] \* \* \* By Mr. Hayes:

Q. Were there any studies made as to initial needs of TWA for aircraft in the period of, I think you said 1958 to 1959 when the jets would first go into service?

The Special Master: Yes or no.

- A. Yes.
- Q. Pardon?
- A. Yes.
- Q. Who made such studies?
- A. Numbers of people were involved in our equipment studies.
- Q. These are studies that were made in the fall of 1955, now?
  - A. Some of them, yes.

Q. I am talking about those that were made in the fall of 1955, Mr. Rummel.

Who made those studies that were made in the fall of 1955?

- A. People within my department and others, pretty much [Tr. 705] as I explained heretofore.
- Q. You better tell us who the others were who made these studies.
- A. There were many, many studies made throughout this period. And by "studies," I mean investigations. Some were formalized and presented in formal letters; some were recorded only in handwritten notes and the like. We investigated things frequently at Mr. Hughes' request and investigated things that occurred to us we should investigate, and specifically, exactly who participated in all these things at any specific point in time, I can't testify to.
- Q. Does that mean that you cannot now identify who outside of your department made studies of initial needs in the fall of 1955? Is that what your testimony is?
- A. Well, it is not exactly what I said, but that, in substance, would be right.
  - Q. Is there anything wrong about what I said?
- A. Well, if I heard it correctly, I don't believe there was anything wrong with it. It just wasn't what I said.

Mr. Sonnett: Is the question concerned, Counsel, with employees of TWA? Are you including the Hughes Tool Company people, as I assumed you were, [Tr. 706] but it is not clear from the question. I am sure the witness must have construed your question in some fashion.

The Witness: I construed it as-I am sorry.

By Mr. Hayes:

Q. How did you construe the question when you answered it, Mr. Rummel?

A. TWA.

Mr. Hayes: I believe here, too, Mr. Brownell, it would be helpful if any such studies made in the fall of 1955 were produced.

The Special Master: Did you rely on any specific studies of this category in preparation of this statement in your prepared testimony?

The Witness: No, not specific studies.

The Special Master: I don't see how he could produce any, then, if he did not rely on them in the preparation of this testimony.

Mr. Hayes: He has testified, Mr. Brownell, that they have been made and here I am—

The Special Master: He gave a very broad definition, as I recall it, of what he meant by "studies," and included oral conversations and con-[Tr. 707] ference material which would not be susceptible, I don't believe, to production of any paper.

Mr. Hayes: Obviously, oral statements would not be, but anything that is in writing is susceptible of production.

I have a right, I submit, to cross-examine him as to what the accuracy of this statement made by him as to—it's a form of opinion, apparently—what TWA should have done in 1955, and if such studies are extant, I submit they should be produced by way of testing—

The Special Master: To the extent that you relied on them in the preparation of this statement, I will ask you to produce formal reports.

Mr. Hayes: Mr. Brownell, if I may, that is asking him to produce nothing, because he has just testified that he did not rely on any. I am asking for any studies that exist, whether he relied on them in the preparation of this report or not.

Mr. Sonnett: Now-

Mr. Hayes: Just a second, Mr. Sonnett.

Mr. Sonnett: I am sorry. I thought you had finished. Please go ahead.

Mr. Hayes: Here he has made a statement.

[Tr. 708] Am I supposed to be bound by this statement, without referring to contemporary records that may have been made? If they exist, they might refute this statement.

I submit I have a right to examine them and ask the witness to explain them, if they differ from this statement. They are plaintiff's records we are asking for. They are records which, according to this witness studies were reduced to writing, were made. I am not asking for anything oral. I am asking for what is susceptible of production, written studies.

Otherwise, you are saying in effect that I must accept, without reference to contemporaneous documents, the statement the witness makes.

The Special Master: To the extent that you relied on them in the preparation of this statement, I will ask you to produce them.

The Witness: Yes, sir.

Mr. Sonnett: I was about to point out, Mr. Brownell, as counsel has overlooked apparently, that one of the documents relied on was annexed. It is Annex C to the witness' testimony. And that has been produced, and that is the kind of study I gather the

witness has been talking about, where there was ITr. 7091 something formal.

However, we have noted your direction and we will comply with it.

Mr. Hayes: I am sorry to seem to be stubborn on this, but I press for a direction to produce any studies that are extant, whether he relied on them in connection with the preparation of this statement or not. They may not have been studies that he made. They may have been studies made by others.

If the plaintiff has them, I submit they should be produced, Mr. Brownell.

Mr. Sonnett: Whatever we had was produced when you were entitled to pure discovery years ago. We produced thousands of documents from Kansas City and every place else. Why don't you look in your files. Maybe you got them, if there are any.

Mr. Hayes: We find none. And I respectfully submit that the direction should be broader than the one you just gave the witness.

The Special Master: To the extent that it is broader than that, I will overrule the request.

# [Tr. 714] • • By Mr. Hayes:

Q. The notes I have are that in response—in a fairly long response to a question of mine you spoke about the family concept and what would have been ordered, if your recommendations had been followed, and at that point added "others disagreed with my recommendations." I did not interrupt you at the time, because you continued speaking about medium range planes at the time, which were not satisfied by Boeing.

My question now is who disagreed with what in your recommendations?

The Witness: Is it fair to ask that that part of my previous statement be read back? I don't remember exactly when I made that comment.

Mr. Hayes: Do you now recall that anyone in TWA or Hughes disagreed with your recommendations in the fall of 1955 as to what should be ordered?

The Witness: Well, I guess the—to try to answer your question, I am sure that not everyone agreed with me on everything at any time. I don't specifically recall I used that phrase.

ITr. 715] The Special Master: This is without reference to your previous statement. It is a question on its own.

The Witness: Oh, I'm sorry.

Not really, no. There certainly was discussion back and forth on should we buy Boeings versus some other type airplane, for example.

And at one point in time I think Ralph Damon pointed out that Boeing had not always built the world's best commercial planes, but he did not press the point at all in terms of conclusions arrived at, did not make it a point of disagreeing.

- Q. Was Mr. Damon of a different opinion from yourelf with respect to whether Boeings or Douglas should be ordered?
- A. I don't recall his expressing such a view.
- Q. Did others in TWA express a preference for jetrop planes as distinguished from pure jets?
- A. I certainly don't remember any such preference eing expressed in the fall of 1955.

(Tr. 7181 Q. Did TWA acquire turbo-prop airplanes!

A. No.

Q. Directing your attention to exactly the same sentence in your prepared statement, Mr. Rummel, what do you mean by the language: "TWA should have made definite commitments."

I am particularly concerned about the verbs, "should have made."

- A. What I mean is that airplanes should have been ordered at least by the time that Pan American and American ordered their airplanes.
  - Q. Did you write this sentence, by the way?
- A. My memory on this is the same as on the others that you inquired into earlier. I can't exactly recall how each and every sentence was composed, but it is a sentence which I certainly agree with. Maybe I did. I just don't remember.
- Q. What I am trying to find out is whether the use of the verb "should have made" is intended to mean as ought to have made.
- A. I'm saying that airplanes should have been ordered when it was timely to order them in order to obtain the best delivery position.
- Q. I understand that. I am trying to find out ITr. 7191 the exact meaning of the words "should have made." Do you mean ought to have made?

A. I don't see any difference.

Q. There was an obligation on TWA, is that right?

Mr. Sonnett: I object to that. It is calling for a legal conclusion.

The Special Master: Sustained.

Mr. Hayes: I have looked up the words "should" and "ought" in the dictionary and find that they

imply a moral obligation, Mr. Brownell, and I want to ask the witness if that's what he means by his testimony, that there was a moral obligation on TWA to have made such definite commitments.

The Witness: These words to me mean merely what I said they meant. That aircraft should have been ordered at that time when other people were ordering them on a contemporary basis to obtain good delivery positions for the company.

# By Mr. Hayes:

- Q. Do you mean by that that all airlines have an obligation to someone or other to place all their orders at the same time with aircraft manufacturers?
  - A. I didn't say that, Mr. Hayes.

ITr. 7201 Q. What do you mean, then?

- A. I really am at a loss to put it any more clearly than I have.
- Q. Let me ask you if you are suggesting that TWA had an obligation to somebody to place orders in the fall of 1955.
- A. Well, we certainly had route franchises and we had an obligation to operate those routes ably and well and proficiently under the granting of the franchises.

Now, you can interpret that in many ways.

- Q. As an obligation to the prospective customers?
- A. I don't say that it was an obligation perhaps in the sense you mean it. I'm not sure what you mean.
  - Q. I am trying to find out what you mean, Mr. Rummel.
- A. I've tried to explain that. I just don't know how to add to it. It is merely a statement in my opinion TWA or someone should have placed orders for jets for TWA at a time when it was timely to do so so we would have good competitive delivery positions initially. That's what I mean.

- Q. That's all you mean by it?
- A. That's all I mean, yes.
- Q. On the basis of what considerations do you [Tr. 721] conclude in this testimony of yours that TWA should have made the definite commitments at the same time somebody else was making commitments?

Mr. Sonnett: I object to the question as repetitive. The Special Master: Sustained.

Q. What considerations entered into your mind in concluding that TWA should have made definite commitments in the fall of 1955, if any, other than the fact that other airlines had been placing orders?

Mr. Sonnett: Same objection.

Mr. Hayes: I have not asked this question before, Mr. Brownell. I am asking—

The Special Master: You covered it for the whole paragraph, Mr. Hayes.

Mr. Hayes: I am sorry, I have not. I have not asked him for considerations other than those he has already testified to. Maybe there are none.

The Special Master: That is a different question.

Mr. Hayes: That is the question I asked him.

The Special Master: Have you any ITr. 7221 additional to which you have not already testified? The Witness: None come to mind, Mr. Brownell.

# By Mr. Hayes:

- Q. Did you have in mind in writing this statement or adopting it TWA's financial ability to place orders at that time?
  - A. Not particularly.

- Q. You did not consider that in connection with this sentence?
  - A. Not particularly.
- Q. What do you mean by not particularly? Either you did or you did not, it seems to me.
- A. I mean I am not unconscious of those considerations, but I didn't give it particular attention.
- Q. Did you give financial ability of TWA any weight at all in the preparation of this sentence?
- A. This is an area in which I personally am not especially proficient. It was not my intention to get into that.
- Q. Does that mean that you did not give weight to financial ability of TWA?
  - A. Not particularly.
- Q. Does "not particularly" mean anything other than ITr. 7231 no?

Mr. Sonnett: I object to that.

The Special Master: Sustained.

Mr. Hayes: I don't know.

The Special Master: Sustained.

Mr. Hayes: It seems to me I have a right to find out what the witness means by an answer when he says "not particularly." What does he mean? Does he mean no or something else?

The Special Master: Taken in connection with his prior testimony it is clear to me what he means.

Mr. Hayes: I am afraid it is not clear to me.

# By Mr. Hayes:

- Q. Did you generally take TWA's financial ability to order the planes into consideration in the preparation of this statement?
  - A. Not really.

Q. Did you know what TWA's financial condition was in the fall of 1955?

Mr. Sonnett: I object to it as irrelevant. The witness has not been offered as a witness on the question of whether or not TWA could have financed ITr. 7241 the planes. There is nothing in his direct on this subject. The cross is wholly outside the scope of the direct.

Mr. Hayes: Mr. Brownell, here is a witness who is put forward as an expert and uses words of obligation that TWA should have made definite commitments. That is the language.

The Special Master: The question, as I recall it, was did you know what TWA's financial condition was in the fall of 1955.

If you do not know it, say so. Or if you knew it in part, say so.

The Witness: Well, at the time I must have known it in part, Mr. Brownell. I don't recall exactly now what the—what it was.

- Q. You have no present recollection, is that correct?
- A. In 1955?
- Q. Of TWA's financial condition in the fall of 1955.
- A. No.
- Q. You have mentioned that you made your recommendations from time to time to Mr. Hughes.

Did you make any of those recommendations to [Tr. 725] Mr. Hughes in writing?

- A. I don't believe so.
- Q. Did you make any recommendations to anyone in Toolco in writing?

Mr. Sonnett: On this subject?

Mr. Hayes: That's right.

The Special Master: With reference to the plac-

ing of orders for jet aircraft?

Mr. Hayes: That's right. Certainly.

A. I don't recall any.

ITr. 7331 Q. On page 7 of your statement, the paragraph which begins on that page, the second sentence of that paragraph, you state:

"By the fall of 1955, various air carriers had submitted firm orders for the acquisition of medium to long range jet aircraft and the anticipated effect upon TWA's competitive position made it important for TWA to do likewise."

What precisely do you mean by "firm orders"?

A. I mean that orders had been announced by the manufacturers and the airlines, and that as a result of this delivery positions were tied up and other salient factors determined.

Q. By "firm orders," do you mean executed contracts or letters of intent or are you not sure which you mean?

A. The orders referred to as we then knew it were firm orders subject only to the usual things of working out specification details and possibly some other factors.

Q. You mean firm orders other than letters of intent?

A. Well, I can't testify what the pieces of paper were called that were actually signed by the different airlines. For all practical purposes these were orders [Tr. 734] and they remained orders.

Q. Did you see the documents? You did not, did you?

A. Not at that time.

- Q. Have you seen them since?
- A. I think I have come to see possibly one or two of them.
  - Q. Which ones have you come to see?
- A. Well, I am groping now but as I recall it I did at one point in time, see a Pan American document through our attorneys.
  - Q. Covering what aircraft?
- A. I can't be that specific now but we made it a practice to review just as many such documents as we could get ahold of.
- Q. Do you recall the date of the Pan American document?
  - A. No, sir, I do not.
- Q. By the way, there was a question I intended to ask when we came back from lunch and I forgot.

We have been talking about 331s and 131s, about the 100 and 300 series. Is the 331—is there some question in your mind?

- A. It sounded like you said three things. There CTr. 7351 were two, the 100 series and the 300 series.
  - Q. That is right.
  - A. All right, I'm sorry.
- Q. Was the 331, the 300 series plane made to TWA's configuration?
- A. Well, basically it was a—configured as a 300, but it included compliance with TWA's requirements.
- Q. That is what I intended my question to be. It was a plane of the 300 series, was it not, made for TWA's requirements?
- A. Well, there were features included which made it comply with our requirements. Basically it was a Boeing design, is what I am trying to say.

Q. I know that. I don't have any question in my mind it is a Boeing design.

Assuming it to be a Boeing design, is what I stated, correct, that it was TWA's version, so to speak, of the Series 300?

A. Yes, sir, and I testified previously to that, I believe.

Q. I don't think you did. I don't think I asked the question.

Was the 131 the TWA version of the Series 100 of Boeing?

Tr. 7361 A. Yes.

- Q. Were 331s as such ordered by any other airline or did each one have its own separate number based on the 300 Series?
- A. Well, as I indicated before, Mr. Hayes, each customer was assigned a model number by Boeing.
- Q. So the only 331s were those built to TWA requirements?
  - A. I believe that is correct.
- Q. The same is true of the 131s, they were the only 100 series built to TWA requirements?
  - A. I believe that is correct.
- Q. I am sorry. I meant to ask that when we came back from lunch. It came into my mind.

What was the source of your information as to these firm orders that were placed in the fall of 1955 by other airlines?

- A. Well, I had assigned to a member of my staff the job of compiling information of this type and keeping me and others advised.
- So he was—he, in his efforts, was my primary source although I of course was also advised by manufacturers' epresentatives and others from time to time in this respect.
- Tr. 7373 Q. Do you know what sources the member from staff to whom you assigned the task used in order put the information?

- A. He used—I don't know exactly. No, I didn't indicate
  —I believe he used announcements, publications that then
  existed, the best information that he could find generally.
  - Q. You mean trade papers?
  - A. Probably, to some extent.
- Q. What trade papers would carry information of this kind?
  - A. Practically all of them.
  - Q. You said trade papers were used to some extent.
    What else was used to get the information?
- A. Oh, things like Aviation Daily, which was a daily newsletter.

Just what all he used in detail, I can't say after all this time.

We had a standing practice of pointing information in his direction that came to each of us, that is, those in our department and he used that plus other information to compile the results.

- Q. The reports that would appear in Aviation Daily or other trade papers were announcements either by air. Tr. 7381 lines that they had placed orders or by the manufacturers that orders had been placed?
  - A. Generally, yes.
- Q. Any other sources of information that you or the man on your staff had?
  - A. I don't think I can add to what I already said.
  - Q. I am sorry.
- A. I don't think I can add anything to what I have already explained.
- Q. With respect to the Boeings, did the Boeing Company supply to you copies of the orders that were submitted by other airlines?
  - A. No.

- Q. Did any aircraft manufacturer supply to you copies of orders that had been placed by other airlines?
  - A. No, I can assure you that was not their practice.
- Q. In that same sentence to which I have directed your attention, Mr. Rummel, what is meant by the words "the anticipated effect upon TWA's competitive position"?
- A. Well, here again, I am referring to the same kind of thing I testified to heretofore with respect to development of our thoughts regarding equipment.
- Q. Is this sentence to which I have directed your ITr.
- A. Well, with respect to the orders, we believed we had factual information and good information.

As to the effect of those orders on the advisability of placing orders for TWA, I'd say as far as my views were concerned, it was a studied opinion.

- Q. But it was an opinion, however well studied?
- A. With respect to what we should then do?
- Q. With respect to the anticipated effect.
- A. Yes.
- Q. That was an opinion you held in 1955, the fall of 1955, is that correct?
  - A. Yes.
- Q. Did you base that 1955 opinion on anything other than what you have already testified to?
  - A. Nothing more occurs to me.
- Q. When you speak of the anticipated effect upon TWA's competitive position, are you referring solely to your opinion as to the anticipated effect?
- A. Well, not necessarily.
  - Q. What does that mean?
- A. Well, it means that people generally recognized that if TWA would operate any length of time without being competitive, it would be in difficulty.

ITr. 7401 Q. Did any others in TWA in the fall of 1955 express to you the same opinion you held?

A. Yes.

Q. Who were they?

A. Mr. Cocke, for example.

Q. Who else!

A. I must say I don't recall finding any great disagreement on the advisability of moving into jets or being competitive.

Q. The question was who else in TWA expressed to you an opinion similar to the one you then held as to the anticipated effect upon TWA. You have identified one, Mr. Cocke.

Is there anyone else?

A. I'm sure Mr. Collings recognized the advisability of our being fully competitive, Mr. Rourke, Mr. Fannon.

I can't think of anybody who didn't.

Q. Did anybody in Toolco express a similar opinion to you?

A. Well, I think it was the actual—well, the answer is yes.

Q. Who in Toolco?

A. I'm certain Mr. Hughes felt it was important that we move once the others had moved.

[Tr. 741] Q. He so stated to you?

A. That's certainly the impression he left me, yes.

Q. Did he state it to you?

A. If you are asking if I remember word for word what he said, I do not, but I'm certain that's what he—what was implied, he said. Maybe I don't remember the words but, yes, that's what he said.

Q. Who else in Tooleo!

A. I certainly had the impression that Mr. Cook felt we should be moving ahead. I don't remember that clearly

whether he categorically said we should move at any particular time.

- Q. Anybody else in Toolco?
  - A. I don't recall any specific people.
- Q. Tell me if I correctly understand your testimony, Mr. Rummel.

I understand that each of these people you have identified said to you in substance that TWA should proceed to the acquisition of jet aircraft because it was important that TWA maintain its competitive position in the industry.

- A. In essence, yes.
- Q. Is there anything else they said that was more ITr. 7421 specific than that?
  - A. I don't recall anything right now.
- Q. Did any one of them mention the number of aircraft that should be ordered?
- A. Well, I'm sure numbers were kicked around, but I don't recall the specifics on that.
- Q. Can you remember now any statement by any one of these people whose names you have given us with respect to the number of aircraft the person believed should be ordered?

The Special Master: In the fall of 1955?

Mr. Hayes: That's right. In the fall of 1955.

- A. Mr. Hughes wound up being quite definite as to what should be ordered.
- Q. What do you mean when you say wound up being definite? You mean when he placed the orders?
- A. No, during discussions we targeted as I explained this morning, certain numbers of airplanes. While I don't recall exactly what transpired, numbers came into being as I best recall it, during the fall of that year.
  - Q. Do you remember the numbers?

A. They weren't final numbers of course until the [Tr. 743] order was placed.

Well, I've already testified to my best ability this morning in that respect.

- Q. Aside from Mr. Hughes, did any other of the persons you mentioned, specify an opinion or state an opinion with respect to the number of aircraft that should be ordered!
  - A. This is during the fall of 1955?
  - Q. That is right.
- A. I'm quite sure they expressed concurrence and did not disagree on the numbers. I don't recall any different numbers being expressed by these people at that time.
  - Q. Expressed concurrence with what numbers?
  - A. The numbers that were being kicked around.
  - Q. You do not recall those numbers?
- A. Well, the number 18 comes to mind, and I am not sure of the numbers on the—as I said before on the 131s.

I remember being very dissatisfied with the number 8 and the number 9.

I am confident that these studies will show larger numbers of that type airplane.

Q. Do I understand your testimony to be that in the fall of 1955 some one or more of these people other than IT. 7441 Mr. Hughes expressed the opinion to you that TWA should order eighteen 331s and some number of 131s?

Mr. Sonnett: I object to the form of the question. It misstates the testimony. The witness has not testified to any conversation with anybody to the effect that TWA should order anything. Hughes Tool Company, Mr. Hughes was doing that.

Mr. Hayes: The statement talks about TWA should have placed the orders.

Mr. Sonnett: That is a different thing.

Mr. Hayes: That is the statement.

Mr. Sonnett: That is a different thing entirely.

Mr. Hayes: I will withdraw the question and I will try another.

[Tr. 752] • • • Q. Are orders that airlines place for aircraft some- [Tr. 753] times cancelled?

- A. Are they sometimes cancelled?
- Q. Yes.
- A. There have been such cases.
- Q. Are they sometimes reduced?
- A. There have been such cases.
- Q. Is this uncommon in the aircraft industry?
- A. It is more uncommon than common in my knowledge, yes.
- Q. TWA, itself, has reduced orders, has it not, after having placed them?
- A. Do you have reference to any particular time period or do you mean during the time I was with the company?
  - Q. Since the voting trust.
  - A. Since the voting trust?
  - Q. Right.
  - A. Since it was established?
  - Q. That is right.
  - A. Yes. We adjusted an order.
  - Q. That is right.
- A. In other words, we cancelled one type and added another.
- Q. As of 1955, what facts did you have which led you ITr. 7541 to believe that the orders placed by other airlines would be fulfilled in full?

Mr. Sonnett: In addition, of course, to whatever he has testified to on the subject to date.

The Special Master: That is understood.

- A. I certainly had no reason that I can recall now to believe that they wouldn't have been fulfilled.
- Q. You just assumed that they would be fulfilled in full, is that correct?
- A. Well, it was my conviction they were entered into seriously with the intent that they should be fulfilled. I knew of no reason why to believe that would not be the case in the fall of 1955.
- Q. In this paragraph as to which I am directing your attention, you refer to Annex C.
  - A. Yes.
- Q. The second and third pages of Annex C list on the top of each page "Firm turbojet transport orders" and "Firm turboprop transport orders."

Do you see that, Mr. Rummel?

- A. Yes.
- Q. Is it your testimony that each of those were final contracts and not letters of intent?
  - A. I did not so testify.
  - [Tr. 755] Q. I am asking you if this is your testimony.
  - A. Oh, I thought you asked if I had so testified.
  - Q. No.
  - A. No.
  - Q. That is not your testimony?
  - A. The final contracts?
  - Q. That is right.
  - A. No, I didn't say they were the final contracts.
- Q. No, no. I did not say you did. I am asking you now if you are saying that these represent contracts, final contracts rather than letters of intent.
- A. I said they were firm orders, and I will tell you now that they were not all final contracts.

- Q. Do you know when the final contracts were entered into in any case?
  - A. Somewhat vaguely.
  - Q. Can you identify any of them?
- A. I guess I was thinking of my recollection of the entering into of agreements with Boeing which we then—and Douglas, which we then believed to be firm and which, in fact, turned out to be firm.

The dates on which so-called final—meaning the last detail contracts were signed, I don't know.

Mr. Hayes: Could I have the first part of [Tr. 756] that answer read?

(The record was read.)

- Q. These agreements with Boeing and Douglas which you then believed to be firm and which you added turned out to be firm, were what, letters of intent or not?
- A. I am pretty sure I tried to answer that one earlier and I said I wasn't sure what the name of the papers were than ran between the parties at that time.
- Q. They might be letters of intent, so far as you know now; is that it?
- A. Well, depending on what is meant by letters of intent. I am not that clear. They were binding agreements, as I understood them, contingent on things like agreement on specification.
- Q. You have seen letters of intent for the ordering of aircraft, have you not?
  - A. Oh, certainly.
- Q. Do they ever contain provisions that unless the final contract is entered into by a certain date there is no binding force to the document?
  - A. Do they ever?

Q. Yes.

A. Yes.

Q. Do you know whether or not the agreements that you [Tr. 757] refer to in pages 2 and 3 of Annex C were that type of agreement?

A. Not exactly, no. I might say it was pretty much a buyer's market.

Mr. Hayes: I move to strike the voluntary statement of the witness.

Mr. Sonnett: I second the motion. You will get through sooner if you do not volunteer.

The Witness: I am sorry.

The Special Master: On this happy occasion on which counsel agree so enthusiastically, I so rule.

# By Mr. Hayes:

Q. I direct your attention to the paragraph which begins about a third of the way down page 9, Mr. Rummel.

Correction was made in your prepared testimony at the beginning of hearings so that the second sentence now reads:

"Early in 1959, I was informed by Leonard Schwartz and Raymond Cook of Toolco that the number of jet aircraft TWA was to receive had been reduced."

## First of all, who was Leonard Schwartz?

A. At that time, he was an officer of the Hughes Tool Company, I believe.

Q. Do you rocall what office he held?

ITr. 7581 A. Job title? No, sir, I don't.

Q. Had he been with one of the aircraft manufacturers before that?

A. Yes, sir.

- Q. With whom?
- A. Lockheed.
- Q. What happened? Did he later go to some other employment?
  - A. After Hughes!
  - Q. Yes.
  - A. Yes.
  - Q. Where!
  - A. I think it was Kaiser Industries International.
- Q. How long was he with Hughes Tool Company, do you recall?
  - A. Not precisely.
- Q. Do you recall where this information was given you by Mr. Schwartz and Mr. Cook?
- A. I talked to Leonard by phone and then later met at the Waldorf Astoria where it was discussed.
- Q. Met with whom, Mr. Schwartz?
- A. Len Schwartz. There is another man from Hughes Tool, I believe, and I am quite certain that Raymond Cook was there.
- ITr. 7591 Q. Did you get this information from Mr. Schwartz during the course of the telephone call?
- A. It had been mentioned by phone, as I recall it. We met with Leonard at the Waldorf Astoria, as I said, and it was reviewed again and discussed in some greater depth.
- Q. You met also with Mr. Cook and some other Toolco person at the Waldorf; is that what you testified to?
- A. As I—I was in touch with Mr. Cook at this time. As I recall it, Mr. Cook was present, yes.
  - Q. And some other person from Toolco?
- A. I am quite sure there was another chap from the Toolco there.
  - Q. Can you identify him?
  - A. I am-not completely, sir.

- Q. What, precisely, did Mr. Schwartz or Mr. Cook or the two of them together give you in connection with the reduction of the number of aircraft?
- A. It was indicated that the need existed for reducing the order from 30 to 20 Convairs for TWA and from 18 to 12 331s for TWA.
- Q. You received both those items of information in the same meeting; is that correct?
- A. My recollection is that both were discussed in ITr. 7601 that meeting, yes.
- Q. Was any reason given for the reduction, Mr. Rum-mel?
  - A. Several reasons.
- Q. Try, if you can, to tell us who said what, if you can possibly do so.
- A. Well, as I recall it, Leonard did most of the talking and indicated financial circumstances made it advisable to reduce the orders, and that additionally he held the view that they weren't needed.
  - Q. Mr. Schwartz held the view?
  - A. That's my recollection, yes.
    - Q. Anything else that was said?
- A. Well, lots was said, including mine and my associates' objections, but I think that's in substance what was said.
  - Q. What associates of yours were with you?
  - A. Mr. Rourke was with me.
  - Q. Anybody else!
- A. I don't recall anyone other than Mr. Rourke being with me.
- Q. One or the other of them told you that financial circumstances required the reduction; is that correct?
  - A. That's my recollection, yes.

[Tr. 761] Q. What was said in that connection?

- A. Well, as I recall it, Leonard pointed out the tremendous sums that were required—they were big—in acquiring the jets and that the need existed for cutting the commitment down.
  - Q. Whose financial circumstances was he talking about?
  - A. Well, I took it he was talking about the Hughes Tool.
  - Q. Did he say so?
- A. Well, it was a Hughes Tool order, and I think he probably did specifically say so, but again, I can't remember every word that was stated.
  - Q. Did he mention TWA's financial circumstances?
- A. It could have been, but I don't recall him saying that, no.
- [Tr. 762] Q. What did you say in response to that reason by Mr. Schwartz?
- A. Well, the main thrust of my comments was that TWA had use for the entire fleet and that the fleet should be preserved.
- Q. Did you tell him that TWA could buy the planes itself!
  - A. I did not.
- Q. Do you know whether TWA at that time could have bought the planes itself?
  - A. No.
- Q. Did Mr. Schwartz say anything to you about any prior conversations on the subject of reduction with anybody else in TWA?
- A. I am not entirely sure at that point in time.
- Q. I don't know what precisely you mean by that, you are not entirely sure at that point in time. I am talking about this particular conversation at the Waldorf.
- A. I don't recall.

- Q. You have no recollection.
- A. Not that precisely, no.

7

- Q. What did Mr. Schwartz say with respect to the view he expressed that the number of planes ordered [Tr. 763] would not be needed by TWA? What did he say in that connection?
- A. He seemed pessimistic with respect to the attractiveness of the jets. He expressed the view as I recall it that too many jets had been committed at large by the industry.
  - Q. He expressed the view that what?
- A. Too many jets generally had been committed for by the industry.
  - Q. Did he say anything else!
- A. He thought—I believe he said that 20 Convairs and 12 Boeings would be sufficient for TWA's needs. This I disagreed with as I said.
  - Q. Is there anything else he said?
  - A. I think that was the essence of what he said.
- Q. Did he mention that he had discussed his view of TWA's needs with anybody else in TWA?
  - A. I don't recall that being stated during that meeting.
  - Q. You mean you heard it stated at some other time!
  - A. Yes.
  - Q. By Mr. Schwartz?
  - A. Yes.

[Tr. 764] Q. When and where?

- A. I can't be that specific.
- Q. What did he state at the time on this other occasion!
- A. Well, he made it known that he had talked to Mr. Thomas and Mr. Leslie and others.
  - Q. And? Did he say what they said?
  - A. I don't recall whether he did, no.
  - Q. Mr. Thomas at the time was the president?
  - A. Yes, that's right.

- Q. And Mr. Leslie the financial vice-president?
- A. That is right.
- Q. But you don't recall that he reported to you as to what Mr. Thomas and Mr. Leslie said?
  - A. No, not specifically.
- Q. What did you say with respect to the view expressed that TWA did not need all the planes that had been ordered?
- A. I tried to persuade Mr. Schwartz and Mr. Cook then and on other occasions that we did need the planes, that we should receive them.
  - Q. What did Mr. Rourke say?
  - A. He held the same strong view that I did.
- Q. Can you recall anything else that was said in [Tr. 765] the course of this conversation?
  - A. No, sir.
- Q. You said you tried to persuade Mr. Schwartz and Mr. Cook on other occasions?
  - A. Yes.
  - Q. How many other occasions?
- A. Well, I didn't count them. At every opportunity that presented itself virtually.
  - Q. How often? Can you give us any estimate?
- A. No, Mr. Schwartz—no, I can't tell you exactly how how many times. They were in the area most of the time.
- Q. Over what period of time did you state your objections?
- A. Substantially I believe up to the time that deals were finally made for the disposal of the planes.
- Q. In the fourth sentence in that same paragraph which begins on the fifth line, you state:

"However it"— that's TWA—"received only 12 Boeing 707-331 jet aircraft, not 18; the remaining six

Boeing 707-331 jet aircraft were diverted to Pan American . . ."

I am not reading the rest of the sentence because it has nothing to do with my question.

What do you mean by the expression "were di- ITr. 766] verted to Pan American"?

- A. I mean simply instead of TWA receiving them, they were delivered to Pan American.
- Q. Do you know anything about the transaction by which they were diverted if I may take your word, to Pan American?
- A. Well, at the time I was partly familiar with what was going on but I was not a party to the discussions with Pan American.
- Q. Do you know whether others from TWA held a view that it was all right to divert six planes to Pan American!
  - A. It is possible that some of them did.
  - Q. What is your best recollection in that connection!
- A. Well, my recollection is that both Mr. Leslie and Mr. Thomas were sympathetic to receiving some fewer planes.
  - Q. How many fewer!
- A. I don't recall Mr. Leslie being quite that categorical I believe on one occasion Mr. Thomas did indicate to me and I argued with him that he was content to wind up with 20 airplanes.

[Tr. 767] Q. Of the Convairs?

- A. That I think was a little later than this. I don't think that occurred at this time.
  - Q. You are speaking of the Convairs?
  - A. Yes.
  - Q. I am talking about the six that went to Pan American
  - A. I'm sorry.

- Q. Did he say anything to you with respect to those six?
- A. I don't recall him discussing specifically the six.
- Q. Then you go on in that sentence and you say,

"These six 707 jets were not replaced until five 707-331Bs were leased in 1962 to 1963."

What is the difference between the 707-331 and the 707-331B?

- A. The 331B is a somewhat more advanced airplane.
- Q. In what sense is it a more advanced airplane?
- A. It is a much later model equipped with fan rather than non-fan engine.
- Q. What difference did it make in the operation of the airplane whether it was equipped with fan rather than non-fan jet engines?

ITr. 7681 A. Well, the principal operational difference is really whether it could be scheduled on somewhat longer flights, that is, the B model.

- Q. Was it a more economical airplane to operate, the B?
- A. It burned less fuel but it cost more to procure. I'm trying to remember—it probably was a little more economical.
- Q. Was the introduction of the fan jet engine considered an improvement in the jets?
  - A. Yes.
- Q. When was the development of the fan jet learned by the industry?
  - A. With respect to Boeing?
- Q. With respect to anybody. The fan jet engine I am talking about.
  - A. For commercial use!
  - Q. That is right.
- A. Again, I say when did we learn about—I guess you mean fan jets becoming available for use—

Q. Correct.

A. —rather than the technical possibility for feasibility, is that right?

Q. That is right.

Tr. 7691 A. I can't be entirely specific but I think it was around—probably around 1958, I believe. I'm not exactly sure right now.

- Q. Who was the first manufacturer to announce the planes with the fan jet engines?
  - A. Boeing, I think. Yes, I'm quite sure it was Boeing.
- Q. See if I can refresh your recollection. Was it Convair with the 990?
- A. It could have been. I'm not sure of that exact date. It could have been. It wasn't as I recall it much difference between.

You asked what the—as to the airframe manufacturers date, I thought. Is that right?

Q. That is right.

A. Yes, all right.

Q. In your conversations with Mr. Thomas with respect to reduced number of planes, did he ever tell you that he would rather have a reduced number and wait for the improved plane with the fan jet?

A. I don't remember a specific referral to the fan jet as such. Except for that I think that view was expressed, yes

Mr. Sonnett: Mr. Brownell, may I be per-IT. 7701 mitted a one minute voir dire on the subject of Mr. Thomas? It will be no longer than a minute.

The Special Master: All right.

Mr. Sonnett: Did you ever have a conversation, Mr. Rummel, with Mr. Hughes about the extent of Mr. Thomas' authority to deal with jet aircraft on behalf of TWA or anybody else?

The Witness: Yes.

Mr. Hayes: Wait a second. First of all I object to my cross-examination being interfered with by plaintiff.

This witness has been put forward as their witness. I submit that I have the right to cross-examination and voir dire of their own witness to me is just utterly ridiculous. So I object—

Mr. Sonnett: I am trying to establish as you must know that Mr. Thomas had no authority whatsoever to deal with jet aircraft.

Mr. Hughes established it. Mr. Thomas knew and so does the witness and so does everybody else.

Mr. Hayes: I object to any questions addressed by plaintiff to its own witness when the witness is on cross-examination.

[Tr. 771] The Special Master: I will sustain this particular objection.

Mr. Hayes: I move to strike the answer already given.

Mr. Sonnett: Then I object to the form of the question with respect to Mr. Thomas because he is singling out a conversation. If he wants to get into conversations with Thomas, let's get the facts. Ask him whether he had a conversation with Thomas as to whether Thomas had any authority to do anything about jets.

Mr. Hayes: No comment. May we have the question to which objection is made. I have forgotten it. (The question was read.)

# By Mr. Hayes:

Mr. Sonnett: Are the questions with respect to Mr. Thomas designed to ask questions about Mr. Thomas as president of TWA or Mr. Thomas as an individual? It is quite important and this is why I wanted to conduct the voir dire.

I think we are entitled to know what counsel thinks he is establishing. Whether this was Thomas IT. 7721 acting within the scope of his authority as president of TWA or not. That's the problem.

Mr. Hayes: No problem. Mr. Thomas was the president. I am asking about a conversation—he was this gentleman's superior and I am asking about his conversations.

Mr. Sonnett: No, Mr. Hughes was his superior in this area and also the superior of everybody else.

Mr. Hayes: I will overlook the gratuitous remarks. There is no point in Mr. Sonnett and I getting into discussion. We can brief those subjects.

Mr. Sonnett: I make an offer of proof, Mr. Special Master to the following effect. At least let me note for the record now and it can be developed on redirect.

When Mr. Thomas was hired as president of TWA it was an express term and provision of his employment, and he was hired by Mr. Howard Hughes, that Mr. Thomas was to have nothing to do with the procurement of aircraft of the financing of aircraft for TWA. Those were areas which were reserved by Mr. Hughes for himself.

[Tr. 773] My further offer of proof is that Mr. Hughes told that to this witness and that Mr. Thomas told that to this witness.

So that the entire line of examination designed to elicit statements of what Mr. Thomas may or may

not have said has nothing to do with the issues before the house.

Moreover, a further offer of proof and that is Mr.

Leslie knew about these limitations of Mr. Thomas'
authority from the outset.

The Special Master: The subject can be covered

in redirect.

Mr. Hayes: Precisely.

What I am curious to know, however, is why if this was so important plaintiff now has to make an offer of proof and did not include it in the statement of its only factual witness.

The last question, if I recall correctly, was not

answered.

The Special Master: I wonder if you would try

Mr. Hayes: I am going to rephrase it.

Q. At what time was it that Mr. Thomas did express the view to you that TWA would need a lesser [Tr. 774] number of aircraft than those ordered?

Mr. Sonnett: Just a moment. I object to the form of the question. If it purports to summarize the prior testimony it incorrectly summarizes it.

The Special Master: Sustained.

Q. What was it you said in answer to my question? Was it not that while Mr. Thomas did not refer to the fan jet engines, he did express the view that TWA would not need the number of planes that had been ordered? Was that your testimony, Mr. Rummel?

A. I don't recall saying it quite that way and I don't

believe that was my testimony.

Q. What was your testimony in that regard?

Mr. Sonnett: I object to that question. Whatever the testimony was the record will show. If there is a question, I think counsel ought to put it.

Mr. Hayes: I have. I am trying to save time here but not going back to the record. That is my recollection of what the witness said.

The Special Master: He testified that is not his recollection.

Mr. Hayes: I know he did.

[Tr. 775] The Special Master: You are now asking?

Q. What is your recollection on this subject of the views expressed to you by Mr. Thomas with respect to the reduction of number of airplanes that had been ordered?

A. My recollection is that he expressed being content with fewer aircraft. However, this was some time after the time that I referred to in this paragraph.

Q. This was after the so-called diversion to Pan American of six 331s?

A. This was after the time of my discussions initially with Mr. Schwartz, and I believe Mr. Cook, I know Ray and I discussed this, that I referred to on page 9.

Q. Was it prior to the time that six 707-331s were

diverted to Pan American?

A. I am not entirely sure of that.

Q. How best can you fix the time of this conversation with Mr. Thomas?

A. I'm quite sure, but I can't be positive of the timing. I believe it probably was around July or thereabouts.

ITr. 7761 Q. Of what year!

A. It may have been-oh, this same year.

Q. 19591

A. Yes, I think so.

Q. Did he state to you in that conversation by what number he would be willing to have the number of aircraft reduced?

A. As I recall it, he indicated that—well, no, I don't think he put it that way.

Q. How did he put it? Tell us.

A. I believe he indicated that he was happy with 20 planes on the basis that the industry had all bought too many jets and in a year or two he could pick them up for a song.

The Special Master: I think the question was directed to Boeings.

The Witness: Oh, to Boeings?

Mr. Hayes: Yes.

The Witness: Oh, I don't recall Mr. Thomas with respect to the six Boeings—I must have been confusing the Boeings and the Convairs. I am sorry.

ITr. 8001 Q. That is the word you used. I want to know what you meant by it.

A. I have tried to explain it.

Q. I want to get specific and I repeat the question, Mr. Rummel:

By a timely basis or by sufficiently contemporaneous, did you mean in your prepared statement that the orders for TWA planes should be placed before the orders for Pan American and American planes?

A. I did not so assume in the prepared statement.

Q. What did you mean, is the question, by your testimony?

Mr. Williams: I object, on the ground that comsel is now arguing with the witness.

Mr. Hayes: This is not argument. This is asking

what he means.

The Special Master: I will overrule that.

Did you mean earlier than October 1955?

The Witness: No, sir.

# By Mr. Hayes:

Q. Did you mean earlier than the orders were placed for American and Pan American planes?

The Special Master: Which was !

Mr. Hayes: I don't know when it was.

(Tr. 801) The Special Master: I can't find it any place.

Mr. Hayes: I can't find it, either. We are suffering under the same disability, Mr. Brownell.

A. I meant at least by the time that the Pan Am order was placed and about the time that American's order was placed.

Q. You say at least by the time the Pan Am. And did you say about the same time as the American? Is that the

phrase you used?

A. No later than that time.

Q. No later than American. Let me ask you if you mean by that language that the contracts for TWA planes should have been entered into on the same day as the contracts for the Pan American planes?

A. I don't think whether or not they were ordered on precisely the same day, in the sense of their having been signed the same day, is nearly as important as having come to agreement as to what the agreements would contain on

any—during the same period of time on a contemporaneous

Once the agreement on delivery positions is achieved, the exact date of signing, one day versus the next, is not that important.

ITr. 8021 A manufacturer would not turn his back

depending on one day more or less, in my opinion.

Q. Now you are transferring your testimony, as I understand it—and correct me if I am wrong, Mr. Rummel—from the actual orders to the agreement on delivery positions; is that correct?

A. I am not—it wasn't my intention to transfer any-

thing.

- Q. In the answer you just gave, you pointed out that the signing of the order was not important; what was important was the agreement on delivery positions. Is that correct or not?
  - A. That is not correct.
  - Q. What did you say, then?
- A. I did not intend to say signing the order was not important.

The Special Master: As I remember it, he did not say it was important to have it signed on the same day—

Mr. Hayes: That is right.

The Special Master: (continuing)—as the other orders, but signed at a time which would enable the deliveries to be made at the same time as those deliveries of its competitors.

FTr. 8031 The Witness: That is essentially correct. The problem is that I am being asked to split a hair, which, as a practical matter, didn't exist.

# By Mr. Hayes:

- Q. I am asking you what you meant by your reference to what you said was important, to wit, the agreement of delivery positions. To what agreement do you refer or agreements?
- A. I am talking about the manufacturer's agreement of delivery positions.
  - Q. Would that be a writing?
  - A. Would it be a writing?
- Q. Right. Would it be evidenced by a writing in the normal course of business?
  - A. Well, certainly.
- Q. It would. Is that called a contract or isn't it called a contract in the trade?
  - A. It can be called numbers of things.
- Q. What are the numbers of things that it can be called, Mr. Rummel?
- A. Well, yesterday we talked about letters of intent and what the precise initial form of agreements were. I didn't recall it specifically. Finally, these things are wrapped up in a untract.
- ITr. 8041 Q. So it would be correct or not to say that by the agreement on delivery positions, you mean a writing which would be either a letter of intent or a formal contract?
- A. I am speaking about agreements on delivery posi-
  - Q. So am I.
- A. (continuing)—that were binding and understood between the manufacturer and the airline and reflected in some sort of writing.
- Q. Right. And I asked you what kind of writing are they known by, and you said all kinds. I asked you to name

them and your answer was letters of intent or formal contracts.

Now, my question is by "agreements on delivery positions, binding agreements on delivery positions," to use your phrase, are you referring either to letters of intent or to formal contracts?

A. I am referring to those agreements which were reflected by the announcements that orders had been placed.

Q. Would they be agreements other than letters of intent or formal contracts?

A. I wouldn't think so, but I don't know exactly the precise form of agreements that existed between the other airlines and Boeing.

ITr. 8051 Q. Can you think of any other form of agreement that was entered into between Boeing and any airlines with respect to delivery positions that took a form other than a letter of intent or a formal contract?

A. Well, there could have been exchanges of wires, there could have been letters of agreement.

Q. I know there could have been. Do you know, as a fact, that there were?

A. I have already indicated I did not—do not precisely know the form of agreement between the other airlines and Boeing.

Q. Whatever the form was of the agreement on delivery positions, whether it be a letter of intent, an exchange of wires, letters or a formal contract—I do not care what form it took, Mr. Rummel—do you, by timely basis, mean that the orders or the agreements on delivery positions for TWA planes should have been made the same day as such agreement for either Pan American or American planes

A. Well, I think I have already answered that question.

Mr. Williams: I think he has, too.

Mr. Hayes: I don't think he has.

Mr. Williams: I think you have been over ITr. 8061 this enough.

Mr. Hayes: He can answer this yes or no, Mr. Brownell, it seems to me, as to what he means. I don't know what he means.

The Special Master: I will sustain the objection. I think it would be helpful to find out what the witness thinks is the relationship between the date of order and the date of delivery. Perhaps that is what you are really trying to get at here.

Mr. Hayes: Not precisely what I am trying to get at. Mr. Brownell.

Will you pardon me for just a second?

Do you want to say anything in response to the Special Master's comment?

The Witness: Well, deliveries, Mr. Brownell, are one of the primary objectives, that is, early favorable delivery positions are normally one of the primary objectives of these negotiations.

And up until you actually sign up and there is an agreement, there is always the possibility of somewhere that maybe the negotiating parties can do a little better to their interests.

As a practical matter, however, as things mov-[Tr. 807] ed along, deliveries became generally allocated during the negotiations and the likelihood of changes at the very last minute usually became fairly remote.

# By Mr. Hayes:

Q. I still would like to know just what you meant by your testimony, Mr. Rummel, as to a timely basis or suffi-

meant that the orders or letters of intent or fixing of delivery positions by any writing for TWA planes had to be entered into at the same time as similar agreements for either American Air Lines or Pan American Airlines.

Mr. Williams: I object to the form of the question and also it is repetitive.

The Special Master: Sustained.

Mr. Hayes: Mr. Brownell, this is a very critical portion of this. There is a whole series of tabulations built upon it.

Timely basis is a general expression. Sufficiently

contemporaneous is a general expression.

I submit that I have a right to probe this witness and I ask you seriously to reconsider your ruling so that we will know precisely what he means by this language.

Sufficiently contemporaneous could mean before ITr. 8081 or after or the same minute. He has already told us that it doesn't necessarily mean before.

The Special Master: Reading that sentence and the next one together, Mr. Witness, by "timely basis" for the orders, do you mean October 1955?

The Witness: Not necessarily. I mean, really, at about the same time. That is that all—that the orders for the three airlines were brought to a head and culminated at just about the same time.

The Special Master: Can anyone tell me when the Pan American and American firm turbojet transport orders were dated?

Mr. Hayes: I can't. That's why we have the sub-

The Witness: I can give you my best recollection, but I don't know that I could state it as a fact.

The Special Master: All right, I would be glad to have your best recollection.

The Witness: I am quite sure that the initial Par Am orders were in October, and I am reasonably confident that the initial American order was in November, but the early part.

The Special Master: You have already answer. [Tr. 809] ed that "timely basis" would not be before,

not necessarily be before October 1955.

The Witness: Contemporaneous negotiations bringing them to a head at about the same time. One day more or less at that time would have been honored by Boeing.

The Special Master: Mr. Hayes?

# By Mr. Hayes:

Q. Would you consider sufficiently contemporaneous an agreement to purchase planes for TWA which followed by one day the agreements for American and Pan American

A. Well, that would depend entirely on the circum-

stances. It could be that that would be all right.

Q. You say it would depend entirely on the circumstances. What do you have in mind, Mr. Rummel?

A. Well, if negotiations had been undertaken at a time which would have permitted Boeing to allocate delivery positions which were favorable during the negotiations, if the negotiations had been seriously entered into, as opposed to, for example, a last-minute rush after deliveries had been promised to others, with a big rush to buy within one day, but without the benefit of earlier timely negotiations—these are the kinds of qualifications that I attach to my answer—it's hard to say.

[Tr. 821] • • • Q. Did those studies, if you recall now, indicate on what routes piston equipment would be used and on what routes jet equipment would be used?

I am speaking of the 1955 studies now, Mr. Rummel.

A. Well, I don't recall the specifics of the studies quite that well.

They all tend to reflect use of jets in the prime long haul routes initially, and the cessation once volume was obtained with the jets.

- Q. Do you recall if any of those studies con- [Tr. 822] sidered the possibility of using turboprop airplanes on any of TWA's routes?
  - A. Turboprops were studied in that period.
  - Q. With respect to their use on particular routes?
  - A. Yes.
- Q. These are the same studies you are referring to that are being searched for now leading to recommendations, is that correct?
  - A. They would be included, yes.
- Q. Did anyone outside of TWA by way of advice to TWA make studies of the plane requirements of TWA in 1955!
  - A. Yes.
  - Q. Who?
  - A. Manufacturers.
  - Q. What manufacturers?
- A. Boeing, Lockheed. Convair did a lot of work but I'm not sure they arrived at a conclusion.
- Q. Anybody else?
- A. There were likely others, but I don't recall specifically.
- Q. Did anyone outside of TWA other than aircraft manufacturers make studies of TWA's plane needs in the fall of 1955?

ITr. 8231 A. Mr. Hughes gave this a great deal of attention during our various conversations and contacts.

Whether he had outside studies behind his views or not, I'm not certain.

- Q. So you don't know as to whether Mr. Hughes had studies made, is that correct?
- A. Well, he had studies made through me as I testified before.
  - Q. I am talking about-
  - A. You mean outside studies, I take it?
  - Q. Yes.
  - A. Not that I know of. I just don't know.
- Q. Were copies of the studies made by Boeing, Lockheed, Convair or other aircraft manufacturers delivered to TWA? I mean those made in the fall of 1955.
  - A. Yes.
  - Q. You have seen them?
  - A. I did at the time, yes.
- Q. Did anybody outside of TWA other than the aircraft manufacturers and other than the Tool Company make a study in the fall of 1955 with respect to TWA's plane requirements?

The Special Master: Jet plane requirements? Mr. Hayes: Yes.

ITr. 8241 A. I'm quite sure they did.

Q. Who!

- A. Well, I can't be entirely sure of the timing, but I believe that it was in this period of time that Pratt & Whitney did.
- Q. Pratt & Whitney made studies of the aircraft requirements of TWA?
  - A. Yes, they did.

- Q. Were copies of those studies delivered to TWA?
- A. Yes. In each case—I mean in some cases they were letters and in some cases reports and in some cases they were briefs handed to TWA representatives or to Hughes during meetings. It was that kind of thing

But the answer is yes.

- Q. Did anybody else make studies of TWA's plane requirements in the fall of 1955?
  - A. I'm not certain at the moment.
- Q. To what is it you are referring to in your statement in answering this question?
- A. Well, I—I'm referring to the list of aircraft, Annex A, to the testimony.
  - Q. Annex A?
  - A. Yes.
- Q. Do you recall now what studies made by Boeing [Tr. 825] showed?
  - A. No, I don't.
- Q. Do you recall what the studies made by Lockheed showed?
- A. Not definitively, no.
- Q. What do you mean by "not definitively"?
- A. Well, I mean I don't remember definitively what the studies showed
- Q. You mean you do not remember what the studies showed even without the word "definitively"?
- A. No, they showed that we needed Electras in Lock-heed's opinion but I don't remember how many.
- Q. You are uncertain as to whether or not Convair made

Do you recall anything in the nature of a study from Convair in the fall of 1955 as to TWA's jet requirements?

A. Yes, to some extent.

Q. Give us your best recollection, Mr. Rummel.

A. Convair studies related to the—related to showing the economic characteristics of their various proposals when flown on TWA's routes and route segments primarily.

Q. Economic characteristics of what?

[Tr. 826] A. The various airplanes they were then proposing from time to time.

Q. I am speaking now of the fall of 1955, Mr. Rummel Can you identify what various airplanes they were proposing in the fall of 1955?

A. Well, as I testified earlier, that would include the Model 18, the Model 19 and the Model 20. By proposing, I mean working on.

ITr. 8791 • • • Q. You testified this morning, Mr. Rummel, that both the 131 and the 331 were developments or outgrowths, I have forgotten the exact word you used, of the Boeing 707 original model so to speak, do you recall that?

A. Yes.

Q. When was the 331 first offered to the airlines?

A. I think that was covered here before when we were discussing what was meant by the word "offer."

It was discussed and Boeing was attempting to sell it during the fall of 1955.

Q. Do you recall when the first orders were placed with Boeing for 331s? I mean for the 300 series [Tr. 880] I should say. Because the 331 was a TWA designation?

A. I'm pretty sure that Boeing—I'm sorry. I am pretty sure that Pan American changed its order, that is, divided it between the 100 and 300 series some time during December, but I don't believe the orders were formalized until later.

### A-585

#### Rummel-Cross

The Special Master: December 1955? The Witness: Of 1955, yes, sir.

- Q. Are you referring, Mr. Rummel, to the order for 707s by Pan American which appear on the second line of page 2 of Annex C? Is that the order you are referring to?
  - A. Yes.
- Q. Which you testified this morning at the time the order was placed was not for 331s.

What was the change that took place in that order as you recall it in December of 1955?

- A. They wound up with six J57 powered airplanes on order about that time. The rest were J75 powered airplanes.
  - Q. The J57 was the 100 series, was it?
  - A. Yes.
  - Q. And the J75 the 300 series?
  - A. Yes.

ITr. 8811 Q. The 100 series being the rough equivalent to use that expression, of the 131s and the 300 the 331s, is that correct?

- A. Yes.
- Q. How many of the 300 series did they have on order after they made this change?

Can you answer without referring to your prepared statement from your recollection?

- A. I want to be entirely sure.
- Q. I want to know if you can answer without refreshing your recollection from your prepared statement or do you feel you need to refresh your recollection.
  - A. I'd feel better if I looked at it.
- Q. Does that mean you need to refresh your recollection, Mr. Rummel?

Mr. Williams: Can you remember it without looking at the paper?

The Witness: Well, not definitely, no.

Q. All right. Now you may look at the paper and tell us what you are looking at.

A. Thank you. I didn't realize I had to have permission to look at my testimony.

17.

Q. 17 of the 300 series?

[Tr. 882] A. Yes.

- Q. What were you looking at to get that figure?
- A. Page 10 of Annex D.
- Q. That would be a total of 23 aircraft they then had on order from Boeing, is that correct?
  - A. I believe so.
- Q. So they increased the order by three in December you recall, according to your best recollection, in 1955?

A. To the best of my recollection.

The actual order was, I think, formalized later but I believe this change was negotiated during December.

- Q. Do you know why it was that if Pan American wanted more 300 series than 100 series planes, it did not order the 300 series when it first placed its order?
  - A. Well, I testified to that before, Mr. Hayes.

My recollection is that when Pan Am ordered, the 300 series had not crystalized.

Q. When did it crystalize?

A. I believe it crystalized during December.

Q. That was-

A. It crystalized in the sense that it became a definitive project, not that all details had been agreed on.

ITr. 883] Q. Was the first order for the 300 series the one placed by Pan American?

A. Yes.

Q. I notice in your paragraph to which I have been addressing these questions on page 10, the one just below the middle of the page, you state that in order to meet TWA's needs the 331s should have been ordered at that time, to wit, October 1955.

Will you explain how they could have been ordered in October 1955, if the plane had not been crystalized in October 1955?

A. The same way Pan Am ordered planes in October 1955. We and Pan Am were dissatisfied with the characteristics of the planes that were offered at that time. That was one of the motivations working with Convair to get a better airplane. Work was still under way insofar as developing and defining airplanes.

Q. By this second sentence of that paragraph is what you really mean that TWA's order should have been placed in October 1955, for 22 Boeings of the 100 series so that 18 of them could later be changed to the 300 series?

A. No, what I really mean is that we should have ordered 15 airplanes suited for domestic operations and ITr. 8841 18 suited for international operations that we foresee as being suitable for it.

(Tr. 972] ••• Q. Were these offers of early delivery positions part of the effort to persuade the particular airline to buy its rather than its competitor's planes?

A. Well, partly, and partly in response to the airlines' drive to obtain early positions.

The major airlines were all seeking the best, the most favorable early positions, and the manufacturers had the problem of trying to keep to the degree they could the airlines reasonably interested.

Q. Which of the two major aircraft manufacturers of fered the earlier positions, generally?

ITr. 9731 A. In terms of the calendar, that is, who was able to produce jets first, if that's what you mean, Boeing was.

- Q. Were the offers of delivery positions by Boeing to airlines generally earlier than the offers of delivery positions by Douglas?
- A. I believe you are asking, Mr. Hayes, whether Boeing offered airplanes for delivery before Douglas offered airplanes for delivery?
  - Q. Correct.
- A. Well, the offers were made about the same time. The deliveries promised by Boeing chronologically came before they were promised by Douglas.

Tr. 9851 • • • Q. All of the 100 series were the same basic airplane I gather, but as delivered, 131 was delivered for example to TWA, it was to a certain degree a custom-made product, is that correct?

A. Well, that's exactly what I testified to earlier. I just indicated I had nothing to add.

Q. That is fine. I just want to make sure.

The next practice you identified as included in the prevailing industry practices which accorded with Boeing's selling policies was that of offering and selling delivery positions on a monthly allocation basis.

Is there anything you want to add to what you [Tr. 986] have already testified to this morning which falls under that practice?

A. Boeing indicated during negotiations conducted subsequent to the contract signing that some sort of off the

record agreements existed with respect to delivering certain numbers of airplanes initially to specific airlines.

That's all I would add.

- Q. You said Boeing indicated during negotiations conducted after the contract was signed—what contract are you referring to?
- A. Hughes Tool. That does not—I might say it was not during the fall of 1955 that I think you are still talking about, so perhaps I should not have volunteered that information.
  - Q. We might as well talk about it.

You say that Boeing indicated this whenever it was. When were these negotiations to which you just referred?

- A. I don't remember exactly, Mr. Hayes. It was after the contracts were signed, prior to delivery.
- Q. The first contract was signed in 1956 and the first delivery was what, in 1958 or 1959?

A. 1959.

ITr. 9871 Q. Can you place more specifically than that broad range when these negotiations took place that you are talking about?

A. No, I can't be precise. It was during the course of construction of the planes, as I recall it.

Q. You testified that this took place during negotiations. What negotiations were being conducted at the time?

A. Well, efforts were made to—both initially and later to have Boeing adopt the sequential delivery relationship and to improve the Hughes Tool delivery positions.

Q. Who conducted these negotiations?

A. Primarily myself, Mr. West, I believe Mr. Cook was involved at some phases. I was in touch with Hughes on cartain times on this.

Q I am sorry!

A. I was in touch with Mr. Hughes.

Q. You say you were in touch with Mr. Hughes?

A. Yes.

Q. I was not sure what you said.

These were negotiations to attempt to improve delivery positions as stated in the Toolco contracts?

A. Yes.

TTr. 9881 Q. Which Mr. West was that, Mr. Harry West of the Chadbourne firm?

A. Yes.

Q. You say that Boeing indicated an off the record agreement existed.

How did Boeing indicate and to whom?

A. Verbally.

Q. Who in Boeing indicated it to whom else?

A. I'm not absolutely certain.

Q. What is your best recollection?

A. I have the impression now that it was during negotiation with Mr. Connelly that this became clear.

Q. To whom did Mr. Connelly indicate it, to your

A. I was there.

Q. Oh, to you. Who else was there?

A. I'm not entirely sure of that at the moment.

Q. But at any rate your best recollection is that at least Mr. Connelly indicated it to you?

A. That is the impression I have now, yes.

Q. When you say "impression," you mean your best reollection, I assume?

A. Yes.

Q. What Mr. Connelly indicated to you was that an ITr. 9891 off the record agreement existed concerning delivery of a certain number of planes to specific airlines.

Can you elaborate on that and tell us what he indicated as to how many planes were to be given to what airlines

A. As I recall it, it was American and Pan American. And I believe that he indicated that each of these airlines would receive either three or four planes each, that is, Pan Am first and then American.

Q. Before any other airline received any, is that what you are saying?

A. Yes.

I think Boeing viewed this as a moral commitment that fell out of the negotiations that they had with these airlines, but it wasn't strictly reflected in the contract. That's what I meant by off the record.

Q. Did he tell you that it was no part of the formal agreements that had been entered into with Pan American or American?

A. I think so but I can't recall it with that degree of clarity at the moment as to exactly what he said.

Q. Did he tell you when these off the record agreements with Pan American and American were made?

A. I don't know that he did or he didn't.

[Tr. 990] Q. Did he indicate that they were made at the time the orders were placed by Pan American and American?

A. I don't know, Mr. Hayes. That's the impression I have.

Q. The impression was that he indicated that they were made at the time the orders were placed?

A. No, my impression was, as I recall it, that that's when they were made. I don't recall whether he specifically indicated that.

Q. You testified, Mr. Rummel, that the next prevailing industry practice which you mentioned which conformed with Boeing's sales policies was that it was generally the

practice of the manufacturers to give better delivery positions to those who first agreed to purchase planes, holding somewhat later positions for those they hoped to sell later

Is there anything you want to add to what you [Tr. 99] have already told us with respect to that general industry practice?

A. No.

Q. The last of the industry practices you identified was that each of the aircraft manufacturers tried aggressively to sell aircraft.

All you are saying there is that they were trying to sell aircraft, is it not? That was their business.

- A. They were trying real hard and were ready at that particular time.
  - Q. You mean were ready to sell?
  - A. They were ready to commit, yes.

Tr. 10221 • • • Q. Your second assumption, pargraph numbered 2 is that, "Pan American, TWA and American all sought as early delivery positions as Boeing would provide."

Did TWA or Tool Company working with TWA seek as early delivery positions as Boeing would provide?

A. We, during the course of negotiations, did try to obtain the most favorable positions that were then available.

Q. When would Pan American, according to your assumption No. 2, seek those early delivery positions?

Mr. Sonnett: I don't understand that to be different from the question of when would the orders have been placed which has already been covered.

The Special Master: This is an assumption, isn't

Mr. Hayes: That's right.

A. During the course of contemporary negotiations.

Q. Can you elaborate on what you mean by contemporary negotiations, Mr. Rummel?

Mr. Sonnett: I object to that as repetitive. It was gone over yesterday at great length.

(Tr. 1023) The Special Master: Sustained.

Mr. Hayes: I submit, Mr. Brownell, that this is absolutely basic to all of plaintiff's so-called case here and that I should be accorded the widest latitude in discovering just what this witness has in mind with these broad general statements.

I did not ask him any questions so far with respect to assumption 2, none at all.

Mr. Sonnett: The subject matter has been covered at length. Mr. Brownell, we will be at this for months unless counsel—

The Special Master: I am trying to give counsel great latitude in this particular instance.

I sustain the objection.

[Tr. 1050] • • • Q. In the fall of 1955, Mr. Rummel, when Mr. Damon was president of TWA, was Mr. Damon in favor of ordering Boeings in the numbers which were eventually ordered from Boeing?

Mr. Sonnett: May I ask for clarification of the question as to whether or not I have an objection?

Is the question intended to find out whether Mr. Damon agreed with the amount of aircraft ordered by the Hughes Tool Company or is the question intended to deal with whether or not TWA should order any aircraft, if any, itself.

Mr. Hayes: I think I will just stand on the question, Mr. Sonnett.

[Tr. 1051] Mr. Sonnett: Then I object to it as indefinite. I don't know what aircraft you are talking about.

Mr. Hayes: I am talking about Boeing aircraft.

Mr. Sonnett: You left wide open the question who was ordering the aircraft. That makes quite a difference as to whether or not I find it objectionable for other reasons.

Mr. Hayes: So we won't have to bother reading it back, I will restate it.

The Special Master: All right.

Mr. Hayes: It may not be a complete restatement but at least it will be a rephrasing.

Q. In the fall of 1955, Mr. Damon was president of TWA. Was he in favor of ordering Boeing jet aircraft in the numbers that were eventually ordered?

The Special Master: Do you know whether he was?

The Witness: I think he died before the last orders were placed.

The Special Master: I think the question was whether in the fall of 1955 he had formulated an opinion and that opinion was known to you and IT. 1052 it was either for or against ordering the number of Boeing planes that were eventually ordered in this initial order.

The Witness: In the initial order?

The Special Master: Yes.

The Witness: I had the impression that he was strongly in favor of ordering Boeing airplanes at that time, that he did not disagree with the numbers.

Q. In what numbers was he in favor of ordering Boeing aircraft?

A. I can't specifically say the precise numbers he may have had in mind, but I don't recall Damon ever opposing the orders. He was anxious for TWA to move forward into the jet age fully competitively.

Q. Mr. Damon, in fact, died before the first order was placed for any Boeings, did he not?

The Special Master: He stated that was his recollection.

Mr. Hayes: Pardon.

The Special Master: He stated that was his recollection.

Mr. Hayes: Oh, did he? The Special Master: Yes.

Tr. 1053 Mr. Hayes: I missed it then.

Q. Did Mr. Damon ever state to you in the fall of 1955 how many Boeing aircraft should be ordered for TWA's use!

A. Well, I don't specifically recall at the moment. However, numbers of airplanes were discussed around the company a great deal.

Q. Did Mr. Collings in the fall of 1955 express to you his views as to how many Boeing aircraft should be ordered for TWA's use?

A. I already testified to the general concern, and I recall Mr. Collings expressing—I don't specifically recall an exact number, if that was your question.

Q. That was my question.

A. Yes.

Q. In the fall of 1955, did Mr. Leslie ever express to you his view as to how many Boeing aircraft should be ordered for TWA's use?

A. I don't recall the specific number at the moment.

Q. In the fall of 1955, did Mr. Cocke express to you hiviews as to how many Boeing jets should be ordered for TWA?

A. He wanted a sizeable fleet but I don't recall [Tr. 1054] precisely the number that he may have said during the fall

Q. Who else was in the upper echelon of TWA management in the fall of 1955 besides Messrs. Damon, Collings Cocke and Leslie?

Mr. Sonnett: By that do you mean holding some office in TWA?

Mr. Hayes: That is right.

Mr. Sonnett: You are excluding Mr. Hughest That's my point.

Mr. Hayes: Exactly. Mr. Sonnett: All right.

A. You observed that Mr. Damon was president and additionally I mentioned the other day Warren Lee Pierson was chairman. He also acted to some extent in management capacity.

Q. Anybody else in top TWA management at that time!

A. Those would be the only two higher than the ones you mentioned.

Q. Would there be any others below those but above you in the echelon?

The Special Master: With respect to the ordering of Boeing planes?

[Tr. 1054A] Mr. Hayes: With respect to the management of the airline.

Mr. Sonnett: That raises a question as to what the management of the airline had to do with ordering jets in the first place. That's the difficulty with the questioning.

Tr. 1055] The Special Master: Would it cover your point to say whether there was anyone else at this time to whom he made recommendations with respect to the acquisition of the Boeing planes?

Mr. Hayes: He may or may not have made recommendations. They have been higher in the hierarchy than Mr. Rummel was. I am trying to find out who else was there in the TWA hierarchy at that time who was superior to Mr. Rummel in the corporate echelon.

The Special Master: With respect to the ordering-

Mr. Hayes: To the management of the airline generally.

Mr. Sonnett: Other than the ordering of aircraft.

Mr. Hayes: With respect to the management of the airline. It is a simple question.

Mr. Sonnett: I object to the question as irrelevant then.

Mr. Hayes: It is wholly relevant.

The Special Master: I will sustain that, I think it should be confined to people who would have been able to deal with the recommendations with ITr. 10561 respect to the acquisition of Boeings.

Mr. Hayes: He is talking about assumptions here.
The Special Master: On the acquisition of Boeings.

ITr. 1091] • • • Q. Is 1958 a year in which these ill effects were suffered by TWA which you mentioned?

A. Only the latter part of the year.

Q. What do you mean by the latter part of the year?

- A. Well, my reconstruction assumes that we could have and should have under the assumptions received airplanes in November and December of 1958.
- Q. So that does mean a part of 1958 you are including, November and December?
  - A. A very small part.
- Q. That is based entirely on your reallocated deliveries, is it?
- A. This is based on that, yes.
- Q. I direct your attention to the full paragraph beginning at the bottom of page 15, Mr. Rummel, the first ITr. 1092 sentence which reads:

"At approximately the same time, Convair informed Toolco that Convair was proceeding with production of the 30 aircraft ordered by Toolco on the basis of a delivery schedule complementary to the Delta schedule."

On what facts do you base that statement?

- A. Personal knowledge.
- Q. Acquired where!
- A. In my work as a Tool Company representative.
- Q. You mean this is information that was communicated to you as the Toolco representative at Convair by Convair!
  - A. I didn't say that.
  - Q. What did you mean then?
- A. I meant I participated actively in these discussions with Convair and with Mr. Hughes at that time.
- Q. Are you talking about November 1958 when you say "at that time"?
- A. Well, that would have been included, but the problem spanned a number of months.
  - Q. What months?

A. Well, substantially those months that preceded Nov-

Tr. 1093 Q. Do I understand-

The Special Master: Could I hazard a guess that would be September and October?

The Witness: This covered quite a period of time, Mr. Brownell. I am at a loss to know quite exactly—I don't know—I wouldn't want to exclude August, for example: It could have been in July. I'm not that clear.

Mr. Hayes: What is not clear to me, Mr. Brownell, and I don't think is clear on the record, is that in the preceding paragraph Mr. Rummel refers to a confirmation between Delta and Convair as to Delta's deliveries dated November 18, 1958.

Q. Is that when that confirmation took place?

A. Well, that was when Delta signed the agreement that provided specific delivery positions to it.

Q. That was when the Delta delivery schedule was actually executed or confirmed or whatever word you want to

A. Well, November 18th is the date that Delta confirmed the Convair allocation of deliveries to it by signing Amendment No. 3 to the Delta purchase order.

Q. Did Convair advise Toolco before that that it ITr. 10941 was proceeding with the production of the Toolco airplanes on a delivery schedule complementary to the Delta schedule which had not yet been agreed to?

A. This was a period of hectic and rather continuous activity between Convair and myself, and myself attempting to get clearance from Mr. Hughes and agreement on the allocation of planes between Delta and TWA.

Q. What I am trying to find out is whether the information Convair gave Toolco that Convair was going to produce the Toolco planes on the basis of Delta's delivery schedule of November 18, 1958, was communicated to Toolco before or after November 18, 1958.

A. Convair indicated on several occasions that they would be forced to proceed with this sort of allocation, and

earnestly sought our approval to do so.

They communicated this directly to me on numbers of a casions and I am quite sure made efforts to contact the Tool Company directly.

> The Special Master: Before or after November 18th 1

The Witness: Oh, before.

The Special Master: Before November 18th?

The Witness: Yes.

Q. Is it your testimony that before November 18th, ITr. 1095] Convair informed Toolco that Toolco planes would be produced on the schedule which later became Amendment 3 of November 18, 1958?

A. They requested authority to so allocate the deliveries primarily through me as the assigned Hughes Tool Company representative, and this was prior to November 18th.

Q. Who in Convair made this statement to you or made

this request to you!

A. Dudley Digges on at least a majority of occasions. I can't be sure he was the only one I talked to.

Q. Is there any other representative of Toolco who was

informed by Convair?

A. I kept, to the extent that I could reach him then, Mr. Hughes advised, I kept Mr. Cook advised, I believe Chuck Price, quite possibly Raymond Holliday.

Q. These were communications you had with these Toolco people!

A. Mostly phone—either mostly phone conversations or direct personal conversations.

Q. Did Convair directly get in touch with any of the Toolco people, if you know?

A. My belief is that they made this effort on [Tr. 1096] numbers of occasions, including attempting to reach Mr. Hughes through Bill Gay's office.

Q. You said that you tried to keep Mr. Hughes informed when you could reach him and it was not clear to me whether you did or did not reach him with respect to this.

Did you or didn't you?

A. Yes, I did.

Q. When was that?

A. Well, I don't have the precise date. This was during this period of the hectic activity that I referred to.

# Tr. 11001 • • • By Mr. Hayes:

Q. Mr. Rummel, I direct your attention to the paragraph which begins on the top of page 17. You have already given testimony as to the operation of the jet planning groups.

Tr. 11011 In the first sentence of the paragraph you state that TWA's plans for the integration of the Convair 880s were made by such groups under your supervision.

Have you anything to add by way of facts as to the integration of the Convair 880s into TWA's operations?

A. No.

Q. You state in the second sentence that with the knowledge of Toolco, these plans had, since the contract was executed in 1956, been premised on the assumption that all

30 aircraft would be assigned to TWA pursuant to the terms of the Toolco-Convair contract.

What is the factual basis for the phrase "with the knowledge of Toolco"?

- A. My personal contacts with Tool Company representatives.
  - Q. Do you want to elaborate on that, Mr. Rummel?
- A. Well, contacts with Mr. Cook, Mr. Gay, Mr. Price at various intervals of time.

Of course, everyone understood that the planes were destined for TWA because of the announcements to that effect.

And at times, I know Mr. Holliday was familiar with the plan. Later on, Mr. Schwartz.

- Q. In these contacts with Mr. Cook or Mr. Gay or Mr. Tr. 1102] Price or Mr. Holliday or Mr. Schwartz, are you referring only to the fact which I understand your testimony to say was known to them that TWA expected to get the 30 Convairs?
- A. Yes, and additional copies of the jet plans and premises were provided to Mr. Gay's office of the Hughes Tool Company in Houston.
- Q. Was that the invariable practice, to provide copies of the jet plans and premises to Mr. Gay's office?
  - A. They were standing instructions that they be so sent
  - Q. Were they so sent?
  - A. As far as I know, they always were.
- Q. In a prior part of your testimony, you stated that some time in early 1959, you were advised that TWA would receive 20 aircraft. I mean 20 880s. I believe you testified that at or about that time the jet plans and premises were recast to be based on an expected fleet of 20 Convairs.

- A. Well, I indicated actually in the testimony that I thought that the jet plans and premises were revised to 20 after a period of time had elapsed.
- Q. That's right. About the period of time that you stated, as I recall, you couldn't recall how long it was [Tr. 1103] before the revision took place.
  - A. I didn't remember precisely, no.
- Q. After that revision had been made in the jet plans and premises and the jet planning groups came up with different plans, were copies of those, too, supplied to the Toolco?
- A. I am not aware of—I don't remember any changes in the instructions with respect to the distribution of the plans and premises. So I assumed that they were.
- Q. You say in that same sentence that the 30 aircraft on order by Toolco would be assigned to TWA pursuant to the terms of the Toolco-Convair contract.

To what terms of the Toolco-Convair contract are you referring?

- A. All the terms. Just offhand, I can't think of any terms that would be excluded. It was assumed that the warranty aspects, those things relating to the airplane, delivery commitments and all would have been honored. And those things which survived the actual delivery of the planes and any rights the Tool Company would have had as a result of the contract would have passed along to TWA along with the planes.
- Q. Did you prepare this particular sentence or did counsel prepare it, do you recall?

[Tr. 1104] A. I don't recall that.

- Q. The sentence refers to an assignment to TWA pursuant to the terms of the Toolco-Convair contract?
  - A. Yes.

- Q. Was there anything in the Toolco-Convair contract by the terms of which the 30 aircraft were to be assigned to TWA?
- A. There was an assignment—a clause in the contract which, as I recall it now, permitted the contract to be assigned by Tool Company to TWA without the consent of Convair.
  - Q. That permitted the Tool Company to assign it?
  - A. Yes, sir.
  - Q. As you-
  - A. This-
  - Q. Go ahead.
  - A. That's all.
- Q. You were going to say something. I did not want to interrupt you.
  - A. That's all.
- Q. As you recall, that provision of the contract, did it require the Tool Company to assign the planes to TWA?
- A. Well, that's not my present recollection, no. It ITr. 1105] just simply was permissive.
- Q. By this phrase, "Pursuant to the terms of the Toolco-Convair contract," did you mean anything more than that you expected that Toolco would assign all 30 planes to TWA?

The Witness: Well, that question confused me slightly. Would you read it, please?

(The question was read.)

- A. I simply meant pursuant to the terms of the Tooleo-Convair contract.
- Q. You just testified, as I understand your testimony, Mr. Rummel, that the provision for assignment in the Toolco-Convair contract was permissive and not obligatory;

that there was no requirement that Toolco assign the 30 planes to TWA.

A. The contract, I believe, is one of the exhibits and the clause that I refer to is contained therein. It can certainly be read. I am giving you my recollection of what it—the substance of that particular clause was.

Q. Yes, I understand it can be read. I am asking what you meant by the language in this paragraph.

Did you mean anything more than that you expected that Toolco would assign the planes, all 30 planes to TWA?

A. We certainly would expect they would assign all [Tr. 1106] 30 planes.

Q. Did you mean anything more than that by this phrase in this sentence?

Mr. Sonnett: Referring to the phrase "Pursuant to the terms of the Toolco-Convair contract," alone, I take it?

Mr. Hayes: Right.

A. Yes, I think I have already explained that we would expect those things—those Convair obligations which survived delivery to be handed onto TWA.

Q. I understand that if there had been an assignment.

A. Yes.

Q. Certainly. But I am asking about the assignment itself. By the assignment that would be assigned pursuant to the terms of the Toolco-Convair contract, I am trying to find out if you meant in your testimony anything more than an expectation by you that all 30 planes would be assigned.

A. Well, nothing comes to mind at the moment, as I sit

ere now.

Q. Nothing other than that?

A. Nothing other than what I have already said.

Mr. Hayes: I guess I just might as well give up.

#### FTr. 11073 \* \* By Mr. Hayes:

Q. Referring still to the same paragraph and the plans that were made for the integration by the jet planning groups, what dates were used by the jet planning groups with respect to the integration of the Convair 880st

> The Special Master: You mean for their being integrated into the operations?

Mr. Haves: That is right.

A. Well, dates derived from knowledge and belief as to when the airplanes would be delivered, taking into account the necessary activities that had to be indulged ITr. 1108 in as a prerequisite for undertaking service.

> The Special Master: Were the delivery dates set forth in the order?

> The Witness: The airplane delivery dates for the 40 planes were set forth in the contract.

> The Special Master: Those are the dates that you used in planning?

The Witness: Well, after the ten planes had been assigned to Delta, Convair did submit change orders covering the other 30, which I could not obtain authority on to approve, and finally that's what they became and that's what we used. It was obvious it couldn't be anything else at that point, because the planes were being built.

# By Mr. Hayes:

Q. Pursuing the Special Master's question, was the planning of the jet planning groups based on delivery dates stated in the contract between Toolco and Convair?

- A. Well, I think that's all covered here. There were specific delivery dates in the contract for airplanes which were included in the jet planning exercise.
- Q. Throughout the period up to 1960, were those the delivery dates that were used by the jet planning groups?

A. Not throughout, no.

[Tr. 1109] Q. When were changes made in the dates that the jet planning groups used?

A. Well, as the airplanes were delayed, were not received, the jet plans and premises were revised on occasion to reflect those differences, as I recall it.

In some cases, the company would take action to revise schedules and the like on advice, not waiting for the formal issuing of the jet plans and premises, however.

- Q. My question was when did the jet planning groups use dates other than the dates in the Toolco-Convair contract?
- A. Primarily—I can't be specific. My memory is not that good as to exact dates the premises were changed, because they were changed rather frequently, but it was primarily, I believe, during 1960.

There were changes in service dates prior to then, partly as a result of our evaluation of the probable certification date of the airplane.

Q. In the immediately preceding paragraph of your statement on page 16, you set forth what you call a Toolco schedule, November 18, 1958, for 30 planes.

Were the dates of delivery set forth in that schedule the contract dates of delivery?

A. They were consistent with respect to being included [Tr. 1110] in the 40-plane delivery dates, yes.

Q. In the paragraph after the one about which I am questioning you, the one in the middle of page 17, you set forth months of delivery for 20 planes to TWA.

Were those dates based on the contract between Tooleo and TWA?

- A. Contract between TWA and the Tool Company?
- Q. I mean Toolco and Convair. I am sorry.
- A. They were the same.
- Q. They were the same?
- A. Yes. That is, they were embraced by them.
- Q. On page 21 of your statement, the paragraph which begins at the top, you show that deliveries to Delta, except for the first plane, were made in months later than the contract with Delta provided.

Do you see that?

- A. I am looking at the top of page 21.
- Q. Yes. Do you see the schedule to which I refer?
- A. Yes.
- Q. By March 1960, according to this schedule, you knew, did you not, that Delta at least would not get its second plane on the contract date?
  - A. I am quite sure I must have known that, yes.
- Q. Was any change made in the jet plans and premises [Tr. 1111] with respect to the deliveries of the planes that Toolco had ordered for TWA in or about March 1960?
- A. I don't recall the shifting that occurred in that—to that degree of particularity.
- Q. So far as changes that were made by the jet planning groups with respect to the integration of the 880s into TWA's operations, is your recollection any more specific than that changes were made by the jet planning groups during 1960?
  - A. You are speaking specifically of 1960, is that correct!
- Q. That is right. I understood your prior testimony to be that the jet planning groups did use different dates from the contract dates some time in 1960.
  - A. That was included?

- Q. Yes. I am asking you if you can recall more specifically when in 1960 the jet planning groups used different dates in connection with their plans.
  - A. Not specifically, no.
- Q. I direct your attention, Mr. Rummel, to the paragraph which begins at the top of page 22 of the prepared statement of yours and specifically to the first sentence which reads:

"As the purchaser of the Convair 880 jet air-ITr. 11121 craft, Toolco assumed responsibility for all matters pertaining to deliveries of the aircraft and I was instructed by Toolco that no TWA employee was to become involved in such matters."

Did you prepare that statement or did counsel prepare it, that sentence?

- A. Well, I don't know who actually wrote it. I certainly could have.
  - Q. What did you mean by the portion of it which reads:

"As the purchaser of the Convair 880 jet aircraft, Toolco assumed responsibility for all matters pertaining to deliveries of the aircraft."

- A. Well, exactly that. As the Hughes Tool Company representative, I had no authority with respect to delivery matters.
- Q. Do you mean solely that you had not been given any authority by Toolco with respect to delivery matters?
- A. With respect to authorizing changes in contract dates.
  - Q. Contract dates with respect to deliveries, you mean?

    A. Deliveries, yes.

Q. Did you have any authority with respect to agree-ITr. 1113 ments on deliveries by way of change orders!

A. No. In cases—had changes been proposed, for er. ample, which might have incurred delay in delivery, I would have been unable to approve them.

Q. Changes proposed by whom?

A. If they had been proposed by anybody. If on Convair's analysis, specific proposals for including the changes had involved changes for delivery, I would not have been able to authorize them. All such proposals had a block included, calling out effect on delivery.

Q. Say this again. All such proposals-

A. Including the specific—it required that specific cornizance be taken of delivery on effective changes.

Q. That specific cognizance—I am sorry, I don't under-

stand what you are saving.

A. I am just saying that the submission formally authorizing changes or included by change orders themselves, would always show whether or not there was any effect in Convair's delivery, it's contract delivery.

Q. And?

A. I don't recall—in fact, I was specifically not authorized and did not authorize any change orders without clearance that included delays in delivery. That's ITr. 1114] all I am trying to say.

That's all you mean by this phrase as to which I have questioned you?

A. Well, I think you included two facets, if I recall the sentence correctly. I think I answered one of them.

Q. I direct your attention to the first line, second line and half of the third line. That's all one facet, as I under stood it. What two facets are you referring to, Mr. Rummel

A. Well, I said I had not been authorized. I additionally was specifically instructed that no one else in TWA was to become involved in delivery matters.

Q. Is that all you meant by the phrase that Toolco assumed responsibility for all matters pertaining to deliveries of the aircraft, that no authorization had been given to anybody else?

A. It was very clear during this period from contacts with Mr. Hughes that it was strictly hands off with respect to Convair deliveries.

Q. I am asking you is that all you meant by the phrase that Toolco assumed responsibility?

A. By Toolco, I include Howard Hughes, of course.

Q. Certainly.

(Tr. 1115) A. Okay, yes, that's what I mean.

Q. Did Convair, in fact, propose change orders which would have involved delays in deliveries?

A. My present impression is that there was at least one such and possibly more, and I am a little vague, frankly, but I believe that the one on leading edge devices at one point at least included threats of delay.

Q. Were there any other instances where Convair proposed changes in the contract delivery dates?

Mr. Sonnett: May I have that question again? (The question was read.)

Mr. Sonnett: Unrelated to proposed changes in the plane, Mr. Hayes?

Mr. Hayes: Any kind of changes. It is most general.

A. Well, I guess I don't really know.

Q. You don't have any recollection as to any changes proposed by Convair affecting delivery dates other than

the possibility you mentioned with respect to the leading edge device?

A. Right now I don't remember specifically whether or not there were any. I wouldn't be surprised if perhaps there were some.

And, of course, it must be understood or should ITr. 1116 be, and that's why I am answering more at length, that it is quite possible and likely, even, that many of these thing during 1960 were discussed directly with Hughes and—or the Hughes representatives, rather than me.

I don't want to indicate that all contractual matters came through me. It was clear that things on deliveries were not to come through me.

- Q. Who handled matters having to do with deliveries on behalf of Toolco?
- A. As far as—I can't categorically say, but my impression, from talking to the Tool people at the time and also the Convair people, was that Hughes was involved and also some of the Tool Company representatives.
  - Q. Can you name them?
- A. I believe Jerry Owens at one time, I think Raymond Cook was, I believe to some extent Raymond Holliday, and of course, Convair, I know, made numbers of contacts or attempted to make contacts through Bill Gay and the degree to which Bill Gay was involved, I can't say.
- Q. Can you now identify any matters involving delays in delivery that were taken up by anyone in Convair with Mr. Hughes?
- A. Not directly, no. I wasn't present, I don't believe, when efforts were made by Convair people to ITr. 1117 contact Hughes.
- Q. How about Mr. Owens, can you identify any such matters?

A. Well, Owens and I had a fairly long discussion in San Diego, during which he discussed setting aside the planes and the delays that were occurring in the Convair program.

Q. Can you give us the date, approximately, at least,

of that long discussion you had with Mr. Owens?

A. No, I can't precisely.

Q. Can you tell us what was said in the course of that conversation, at least in substance?

A. Well, what he said could be boiled down to simply "Lay off," that he was handling that for Hughes.

Q. "Lay off" what?

A. I was trying to find out during the course of 1960, I believe this was, what in the world we could finally plan on with respect to airplane deliveries. Airplanes had been set aside. And his message was that this was an area that he was involved in with Hughes, and that nothing really could be said. One of his fears seemed to be that I might somehow reveal the fact that we had the discussion.

Q. One of his-

ITr. 11181 A. Fears, f-e-a-r-s.

Q. Oh, fears. That you might do what?

A. Reveal the substance of the discussion to his associates or to Hughes.

Q. The substance of what discussion?

A. The one I am talking about.

Q. You mean your discussion with Mr. Owens?

A. Yes.

Q. Do I understand that he told you in substance that so far as deliveries were concerned, this was a matter he was handling and he asked you not to reveal to anybody that he and you had talked on the subject?

A. Yes. I am not certain of the timing of this meet-

ing, however.

- Q. You can't place the time?
- A. No, not exactly.
- Q. Can you recall any discussions between any one in Convair and Mr. Cook with respect to the deliveries of the 880s?
- A. I can't specifically give you dates, if that's what you are asking.
  - Q. Can you recall the substance of any conversation!
- A. No.
  - Q. How about Mr. Holliday?

[Tr. 1119] A. No, I don't think I can be that specific.

- Q. In your conversation with Mr. Owens, did he tell you or report to you the substance of any conversations he may have had with Convair people?
- A. I don't recall that degree of particularity, although I am sure that that must have been included.
- Q. Did anyone in Convair give you any information as to any discussions they had with Toolco people respecting deliveries?
- A. Well, at various times Dudley Digges indicated he had discussions with Hughes, and to some extent where things stood with respect to deliveries.

His main point seemed to be that he hoped I would try to prevail on Hughes to come to decisions.

- Q. You say at various times. Can you identify any of these times?
- A. Not precisely. I think they were primarily during 1960.
- Q. You cannot be more specific!
- A. Possibly somewhat before. No, there were number of phone conversations that covered a period of time and I just can't remember the exact time of these conversations

Q. You say that in those discussions, Mr. Digges indicated to you that he had had discussions with Mr. Hughes [Tr. 1119A] as to where things stood with respect to deliveries.

Did he tell you in any of his conversations with you what he and Mr. Hughes said to each other?

A. I am quite sure he did include that to some extent. I don't remember the particularity at the moment.

ITr. 11201 Q. You cannot recall anything he may have reported to you with respect to his conversations with Mr. Hughes?

- A. Well, I don't recall it that definitely because of the numbers of conversations that occurred.
- Q. But as you sit here now you cannot recall the substance of anything he may have reported to you as to what was said between him and Mr. Hughes?
- A. Well-
  - Q. Or can you?
  - A. —only broadly, not in specific terms at the moment.
  - Q. Give us your broad recollection.
- A. Well, he was trying to prevail—he gave me the impression he was trying to prevail upon Hughes to have planes accepted and delivered.

The Special Master: May I ask-

Mr. Hayes: Certainly.

The Special Master: —does that mean that planes were available?

The Witness: Well, during the course of 1960, numbers of planes were tendered for delivery by Convair, yes.

The Special Master: To Toolco?

Tr. 1121] The Witness: To Toolco or to me. Things became very tight when they weren't deliv-

ered and Convair then took the approach of shotgunning, contacting almost everyone they could that they thought might have authority to bust the planes loose.

The Special Master: And the tender was rejected by Toolco?

The Witness: Yes, in essence.

Possibly to explain that, in numbers of cases the procedure was to submit an airplane for acceptance flying to determine that it was functionally correct

Then if it was functionally correct, then the contract required that the airplane be delivered, and if at that point delivery wasn't effected, then costs would be accrued with respect to the delay.

So, prior to running the actual acceptance flights since I had no authority to proceed with delivery, I would check or try to check with Hughes representatives as to whether they were prepared to have delivery effective and make payment. At that point, I required clearance which, when I [Tr. 1122] didn't receive it, which was pretty much all the time, then we wouldn't proceed with the acceptance flight and the airplanes would sit.

The Special Master: Does it interrupt you to much for me to ask these questions?

Mr. Hayes: No, no, I welcome it.

The Special Master: Why then was there delay in Delta receiving planes if the planes were available?

The Witness: Oh. No, I didn't mean to imply, Mr. Brownell, that the airplanes would have been available precisely at the time that the contract called for them.

What I meant to say was that they were available during the course of 1960.

The Delta planes were delayed simply for detailed reasons during the course of construction like availability of interior panels that were delayed, I remember, and things of this type that led to this early one month or so delays in Delta's case.

The Special Master: When you failed to receive clearance for taking delivery, did you protest either to Toolco's representatives or Convair [Tr. 1123] representatives?

The Witness: Well, what I was trying to do was to prevail with the Tool Company to receive the planes. All the company's TWA's plans were based on the expectation that the planes would be received and used.

So I did all that I knew how to do through Gay's office, through trying to get Hughes—there were conversations with Hughes when I tried to get the planes—through contacts with Raymond Cook, Raymond Holliday and Leonard Schwartz to try to get the planes busted loose. So I would call that a protest, sir. I don't know if legally that's—

The Special Master: Could you give a general or specific example of this type of protest where you were given some reason why the planes should not be delivered?

The Witness: Well, the general reason as I understood it then primarily from Mr. Cook and Mr. Schwartz, and I believe Mr. Holliday, was that they just simply weren't prepared to pay for them.

At one point in time, Convair proposed some sort of a leasing, minimum leasing arrange- [Tr. 1124]

ment to get the airplanes out, to try to get around that obstacle.

The Special Master: What happened to that proposal?

The Witness: Well, I am a little vague but it was not effected. It was not adopted.

The Special Master: That is all.

Mr. Hayes: I might say, Mr. Brownell, that this area that prompted your questions was something I was going to go into in greater detail.

The Special Master: That is what I was afraid of, that I was interrupting your train of thought.

Mr. Hayes: No, I am delighted you did, and I intended to go into it in considerable detail, but I think one or two things might be related to your questions right now.

The Special Master: Very good.

Q. How many planes were so tendered for delivery by Convair?

Mr. Sonnett: I am not clear that I understand that. You mean how many planes were tendered for delivery and there was delay on the part of IT. 11251 the Tool Company in accepting them?

Mr. Hayes: I am talking about in response to the Special Master's question based on Mr. Rummel's testimony that planes were tendered for delivery and were not taken up. I am talking about the number of planes to which Mr. Rummel referred.

A. I can't remember exactly how many were formally tendered. After—I've explained, after a fair number had been tendered and substantially completed or completed by Convair, they pulled back and did not complete all of the

rest of the airplanes, until the situation cleared as to what they could expect.

- Q. When Convair tendered a plane for acceptance, it would not make delivery without receiving payment, is that correct?
- A. Well, as I just said, Mr. Hayes, at one point during this period Convair undertook to develop a proposal which, as I recall it, would have permitted the planes to be delivered on the basis of a lease or similar type arrangement.

Technically, under terms of contract, when the planes were tendered for delivery—or I should say on delivery, the remaining moneys due were due.

Now, I can't testify as to the detailed dis- [Tr. 1126] cussions that may have occurred in that area between the Convair representatives and Tool Company representatives.

- Q. You said that one of the reasons given you, and this was in answer to one of the Special Master's questions, as to why the tenders were not accepted, is that Toolco was not prepared to pay. You mean the contract price of the plane?
  - A. I said that's what I was led to believe at the time.
  - Q. That is right.
  - A. Whatever was required.
- Q. And by "was not prepared to pay" did you mean that they did not have the funds to pay or that they did have the funds but would not pay, if you know?
- A. Well, I can give you what I now recall my impression was at the time. I certainly cannot testify as to how many dollars were available inside the Tool Company.
- Q. I am asking you what you were told by any Toolco representative with respect to failure to pay for the planes on delivery.

A. My understanding was that financing had not been completed and they simply didn't have the funds.

Tr. 1127] Mr. Hayes: Is there any other question on this line that you have in mind, Mr. Brownell, before we leave it?

The Special Master: Yes, I would like one before we recess.

Were these tenders evidenced by any writing as far as you know?

The Witness: Yes, there were letters required by contract, I believe, which advised when planes would be offered, and then—I don't remember each of the details, Mr. Brownell, but our plant representative was in very close touch and the actual tendering was to him. And I had—as I say, I had to instruct him not to proceed without clearance from me. And I in turn had to get it from Toolco.

The Special Master: Were your instructions from Toolco not to have anything to do with the change orders which would involve change in delivery dates in writing?

The Witness: No, sir.

I might say that hardly anything—in fact, I don't remember anything from Mr. Hughes being in writing. I had rather strict instructions [Tr. 1128] not to put anything in writing, from me to him or from TWA to him.

The Special Master: Were any of your protests as to which you testified on delays in delivery dates or failure to accept tenders in writing?

The Witness: I don't know. There was a lot of letters. I would say that the actions I took to try to have delivery effected were reflected in papers that I had written at the time. I don't remember

specifically going on written record because I just didn't think it was appropriate in terms as you say, of a protest. I didn't view it as a legal protest. I viewed it as something that we had to get moving. I did what I could.

# By Mr. Hayes:

Q. Mr. Rummel, I direct your attention to the next sentence in the paragraph beginning on the top of page 22 which reads:

"If TWA, rather than Toolco, had been the Tr. 11291 purchaser of the Convair 880 jet aircraft, it is my opinion that Convair would have made deliveries of the planes in advance of the dates upon which deliveries actually occurred and that TWA's overall delivery experience would have closely approximated that of Delta."

Would you state for the record the facts upon which you base that opinion?

Mr. Sonnett: In addition to anything he has previously testified to?

The Special Master: Yes, that is understood.

- A. Well, with respect to closely—
- Q. I am sorry.
- A. With respect to closely approximating that of Delta, I believe from having been quite familiar with what was going on at the time that Convair would probably not have delivered initially in strict accordance with the contract but would have delivered more nearly as they delivered to Delta because the same details as I mentioned earlier that applied to Delta, I believe, would have applied to the Hughes Tool planes.

Secondly, it is my opinion that had TWA been in complete control of the situation, airplanes would [Tr. 1130] not have been set aside.

When airplanes were tendered we would have been able to effect deliveries and that the program substantially would have been on schedule.

- Q. Are those all the facts upon which you base your opinion?
- A. Well, this opinion is derived from the conglomerate of knowledge and information which I had just through my position in the whole affair.
- Q. Is there anything else in that conglomerate of knowledge and information which you have not told us?
  - A. I don't recall anything specifically.

I might possibly point out that I can't conceive of TWA having placed planes under armed guard, which occurred

- Q. Anything else?
- A. No, sir.
- Q. What you just told us are all the facts upon which you base your opinion?
  - A. No, that's all I recall at the moment.
- Q. Were there any other facts that you had in mind when you swore to this statement?
  - A. I think I have already covered that.
- Q. Is your answer that there were or were not [Tr. 1131] other facts—

Mr. Sonnett: The witness' answer is that he thinks he has already covered it. He has answered that question several times.

Mr. Hayes: I don't think he has. This is a basic opinion of his and I am trying to find out on what it is built.

The Witness: I think I answered Mr. Hayes to the best of my ability.

- Q. Can you as you sit here now, recall any additional facts upon which your opinion is based?
  - A. Not as I sit here right now.
- Q. As you sit here now, do you recall that there were other facts which may have been in your mind at the time you swore to the statement?
- A. Well, a great deal went on and there certainly could have been.
  - Q. Have you finished?
  - A. Yes, I said certainly could have been.
  - Q. I did not know whether you finished or not.

So far as dates of deliveries are concerned, what difference does it make who placed the order, whether it was TWA or Toolco in your opinion?

Mr. Sonnett: I object to that question.

Tr. 1132 It is argumentative.

The Special Master: Overruled.

Mr. Sonnett: It is too broad.

Is it limited to whether it would be TWA on the one hand and Toolco on the other or is it as broad as it started out to be?

Mr. Hayes: It is limited to a sentence.

Mr. Sonnett: Would you read it? It started out to be as broad as all outdoors.

(The question was read.)

A. I guess I don't know what he really means. If he means dates of deliveries in the contract, for example, that resulted from the negotiation, that might be one facet.

If you are talking about deliveries that were actually effected, that's something else.

I'm not clear on what he intends.

Q. I'm talking about the deliveries you are speaking about in this sentence, Mr. Rummel.

Mr. Sonnett: That isn't what the sentence says.

Mr. Hayes: I beg your pardon. It does-

Mr. Sonnett: It does not.

Mr. Hayes: Please let me speak for a [Tr. 1133] moment, until I make one statement. Thank you

The sentence reads: If TWA rather than Tooleo had been the purchaser of the aircraft, it is my opinion that Convair would have made deliveries in advance of the dates upon which the deliveries actually occurred.

That's what the sentence says.

Mr. Sonnett: That is not the question you asked

Mr. Hayes: Yes, it is.

Mr. Sonnett: No, you asked would it make any difference who placed the orders. That is not the same think as being the purchaser, necessarily. Quite a vital distinction in this case, as you well know.

Mr. Hayes: Mr. Special Master, I submit the ques-

tion should be answered.

The Special Master: I overruled the objection some time ago.

Mr. Hayes: I thought you did.

The Witness: May I have the question?

Mr. Hayes: I will rephrase it instead of wasting time.

[Tr. 1134] The Special Master: All right.

# By Mr. Hayes:

Q. So far as the deliveries of the planes are concerned, and I am referring to the deliveries that you are speaking about in the sentence as to which I am questioning you

what difference would it make whether TWA or Toolco had either placed the orders or been the purchaser? Take it either way.

A. Well, had TWA ordered these planes and had surveillance completely of the contracts, for reasons partly already enumerated, I believe that TWA would have received the airplanes about on time and Convair would have built them about on time.

Q. On what facts do you base that opinion?

A. I am basing it on the belief that had TWA had surveillance, that many of the things that occurred when it did not have surveillance, would not have occurred.

Q. By this sentence, are you suggesting or not that in 1956, the purchaser under the Convair contract should have been TWA rather than Toolco?

A. I'm simply saying that if TWA had ordered these rather than Toolco and had surveillance of the planes during the construction period, I believe that Convair would have tendered the airplanes to TWA for delivery [Tr. 1135] about on time and that TWA would have effected delivery.

Q. Would you answer the question? You already told us that.

Mr. Sonnett: I object to the question, if it needs any further answer; if it does not it is only argument. It is not a question.

The Special Master: Overruled.

A. Apparently there is some distinction in wording in the question I did not discern. Could it be read to me, please?

The Special Master: Yes. I'll ask it.

Did you mean to imply that the contract for the purchase of the 880s should have been placed by TWA rather than Toolco?

- · The Witness: In the reconstruction we are pretty well assuming that's what would have happened.
- Q. So does your opinion as expressed in this sentence contain an assumption by you that TWA could have placed the orders for the Convairs in 1956?
- A. Well, I'm simply stating that if TWA had done that what the effect would have been.
  - Q. Now will you answer the question, Mr. Rummel!

Mr. Sonnett: I submit that's a responsive ITr. 11361 answer, Mr. Brownell.

The Special Master: Have you anything to add to it to your knowledge as to whether or not TWA could have placed the order at the same date that Toolco placed it?

Mr. Hayes: That's right.

The Witness: Well, you see that gets over into the area of financing ability and all that sort of thing and I don't feel too competent to testify on it. That was not my area of responsibility.

Mr. Sonnett: As the witness has previously testified you recall, Mr. Brownell.

Q. Is it correct or not, Mr. Rummel, that so far as this particular sentence is concerned, you are indulging the assumption that TWA would have been financially able to place the orders at the time Toolco placed them?

Mr. Sonnett: I object to that on the ground it has been asked and answered before.

The Special Master: Overruled.

- A. Well, in the reconstruction that's contained in the testimony, it is assumed that TWA would have ordered and then we derived the result that would have [Tr. 1137] been achieved.
- Q. You mean by reconstruction your reallocation of delivery dates?
  - A. Yes.
- Q. Now, will you answer the question, please, Mr. Rum-mel?
  - A. I have tried very hard to answer the question.
  - Q. I will put it again-

The Special Master: If the assumption is realistic, does it not necessarily require you to assume that TWA could have financially and otherwise placed the order at the same time that Toolco placed the order? The Witness: Absolutely.

- Q. So that assumption is in this sentence as part of your opinion, is it not?
- A. Well, I did not specifically develop a personal opinion in that particular respect. That's why I tried to answer this so laboriously.

The Special Master: Off the record.

(Discussion off the record.)

The Special Master: Proceed.

# By Mr. Hayes:

Q. In response to the suggestion made by the [Tr. 1138] Special Master off the record, is there anything more that would constitute a fuller answer to the answers that you have given on this opinion of yours expressed in the sense as to which I have been examining?

A. No, I don't think of any, anything to add at the moment.

A great deal went on that led to my view at the time, but I don't have anything—I don't think of anything specifically to add now.

Q. You have nothing specifically in mind that falls within the great deal that you just mentioned?

A. Well, a lot of it has already been covered in previous testimony, Mr. Hayes.

The disruption to Convair's normal production processes, in my opinion, would not have occurred, had TWA had surveillance of this contract. That embraces many acts that did occur which I believe would not have occurred.

The Special Master: Acts taken by Toolco! The Witness: Yes.

[Tr. 1155] • • • Q. I direct your attention to the next paragraph, if I may, Mr. Rummel, and the first sentence of which reads:

"In addition, if TWA, rather than Toolco, had been the purchaser of the Convair 880 jet aircraft, it is my opinion that by the end of 1960, TWA's fleet would have consisted of all 30 Convair 880 aircraft instead of the 20 aircraft referred to in the previous table."

Will you give me the basis for that opinion, factual basis.

Mr. Sonnett: May we go off the record?
The Special Master: Off the record.
(Discussion off the record.)

A. Well, initially, TWA concurred that the Convair order should be placed and that it should be placed for 30 airplanes for TWA's use.

It planned on the use of those planes. Its planning clearly demonstrated the need for that many planes.

I am convinced that ships would have been delivered substantially on schedule; had TWA ordered and had surveillance of them, and I believe we would have [Tr. 1156] obtained all 30 planes.

- Q. Is there anything you want to add to your answer or is that everything?
  - A. That's the salient, more important points.
- Q. Are there any less important points that you have in mind?
  - A. Not right at the moment.
- Q. The factual basis you give as I understand your answer is, (1) that TWA concurred in ordering 30 planes originally, is that correct?

Mr. Sonnett: That isn't quite correct, but—
Mr. Hayes: Let's have him straighten it out then.
That is why I asked him. I don't want to be accused of misquoting the gentleman.

Mr. Sonnett: All right.

- A. Well, what I am saying is that TWA agreed that it needed the Convair 880 airplanes, 30 of them.
  - Q. This was in 1956?
  - A. Yes.
- Q. That is the first fact on which you base this sentence as to which I am examining you? Is it or is it not?
  - A. Yes.

ITr. 11571 Q. The second fact that I noted is that TWA planned on the use of 30 planes.

A. Yes.

Q. When you say TWA planned on the use of 30 planes, to whom in TWA are you referring?

A. Well, this is pretty much as I described heretofore with respect to our planning activities. The company planned on the use of 30 880s.

Q. That is very broad, Mr. Rummel.

Who in the company planned on the use of 30 880s and when?

Mr. Sonnett: Objection, unless it is limited to anything new that the witness has not already testified to.

Mr. Hayes: I never asked him about this at all.

The Special Master: Does your testimony that
you gave earlier cover this particular phase of the
planning?

The Witness: I think so.

The Special Master: I will sustain the objection.

Mr. Hayes: Mr. Brownell, his testimony did cover
the operation of the Jet Planning Staff [Tr. 1153]
which made recommendations.

The Special Master: He says it now covered this. Mr. Hayes: And we are awaiting the recommendations which we have asked for.

But now he talks about the company planned on the use of 30.

Q. Let me put it this way: When you state that the company planned on the use of 30, are you referring to people in the company other than the Jet Planning Staff!

The Special Master: And the management group in their various functions as to which you have already testified.

A. I have nothing—no one to add in addition to the testified. The Jet Planning Committee and Staff embraced the top management of the corporation.

### A-631

### Rummel-Cross

[Tr. 1179] The Special Master: During the times involved in this line of questioning, you were for certain purposes a representative of the Tool Company as well as an official of TWA?

The Witness: Yes, sir.

The Special Master: So that raises a question or two in my mind.

Your recommendations for the 30 as opposed to the 20 went, did they, to higher officials in the Tool Company as well as to higher officials in TWA?

The Witness: Yes.

The Special Master: Then I take it the meeting at the Waldorf—

The Witness: Excuse me. They were primarily directed to the Tool Company people with whom I was in close contact at the time and who appeared to be involved in effecting this reduction. I was trying to persuade them basically.

The Special Master: The Waldorf meeting, as I understood your testimony, was the first time that you knew definitively that Hughes Tool had decided to cut the number in its order?

The Witness: That is right.

Tr. 11801 The Special Master: You stated here that you expressed opposition to that cut?

The Witness: Yes.

The Special Master: Did you express it to Toolco representatives as well as TWA higher officials?

The Witness: Primarily Tool Company representatives, and I tried to persuade Mr. Thomas, for example, that we should stay with 30 hoping he in turn could persuade them.

The Special Master: How about Toolco officials?

The Witness: Yes. They were Raymond Holliday, Raymond Cook, Leonard Schwartz, primarily.

The Special Master: Mr. Hughes?

The Witness: Yes, I did in phone conversations, at least two, with Hughes indicate my opposition to the curtailment.

The Special Master: Can you give us the substance of those conversations? I am interested especially in the reasons that you gave for your opposition and the replies that you received.

The Witness: Well, these were all, I think, verbal, and they were on the basis of my ITr. 1181] belief, which I expressed to them, that TWA had good and proper use for these airplanes, that we needed them competitively and we would be a stronger airline if we in fact obtained the intended fleet. I felt we would be at a disadvantage if we didn't have them. That was the broad gist of it.

This was repeated—or was said more than once to most of these representatives. I can't recall my exact words now, Mr. Brownell.

The Special Master: Of course not.

What reply, referring now to those two conversations over the phone with Mr. Hughes, what was the substance as nearly as you can recall it of his reply!

The Witness: As I recall, it was dismissed rather summarily, and there was no extended discussion at all.

The Special Master: In your capacity as a representative for the Tool Company for certain purposes, did you feel that you had fully fulfilled your function in advising Tool Company as to the adverse effects that you foresaw in this cut in the number of planes, 880s ordered?

The Witness: Well, at the time I felt I had, if anything over-fulfilled it to the point ITr. 1182 of their finding that it was being replayed like an old record.

Mr. Hayes: I am sorry, I didn't hear that.

The Witness: Being replayed like an old record. I kept going back, and I might say I did not change the plans and premises, until afterwards, hoping that by some quirk of circumstances we could move ahead to the larger number of planes than 20.

The Special Master: Did you ever receive in one of these conversations with Mr. Hughes or the other high officials of Tool Company in answer to your protest, reasons which you considered substantial business reasons for the action that Hughes Tool Company took in cutting the order?

The Witness: Well, Leonard—as I explained, Leonard—Leonard Schwartz' view, which I can again summarize, was that—it is all—I got the impression that's all that they could reasonably handle, but secondly that he felt that we probably didn't need as many as were on order at that time.

My impression from talking to Raymond Holliday and Raymond Cook was that the Tool Company ITr. 11831 wanted to rid itself of financial obligations basically in the curtailment.

The Special Master: Could you give any more detail as to Mr. Schwartz' arguments as to why he thought the lesser number would take care of TWA's requirements?

The Witness: Well, he seemed to hold the view that the industry, including Hughes, had over-bought jets. He appeared to be pessimistic about the ulti-

mate response of the public to the jets which I was confident of, and he indicated the belief that other airlines perhaps would also find it necessary to cut back.

That's about as much as I can recall in specifics.

I remember opposing Leonard's beliefs, because I didn't believe them. I mean, I didn't agree with respect to TWA's need and use and suitability of our getting the entire numbers of airplanes on order.

The Special Master: Thank you. That is all I have.

## By Mr. Hayes:

Q. In answer to one of the Special Master's [Tr. 1184] questions, the one directed specifically to your conversations with Mr. Hughes as to what reasons Mr. Hughes gave you you said in substance, as I noted it, that Mr. Hughes dismissed your protests rather summarily.

Can you tell us exactly—not exactly, but your best recollection as to the substance of what Mr. Hughes said to you!

- A. Well, my best recollection is that he just didn't want to talk about it.
  - Q. Did he tell you he didn't want to talk about it?
  - A. No, he didn't have to tell me.
  - Q. What did he say?
  - A. I can't remember the exact words.
  - Q. I am not asking you the exact words.
- A. I had many conversations with Hughes and I can assure you that I could understand when he did not want to talk about something. This is my recollection of this situation.
  - Q. What did you say to him?
  - A. I don't recall it in that detail, Mr. Hayes.

Q. You have now exhausted your recollection as to what took place in the conversations with Mr. Hughes when you expressed to him your opposition to the reduction in the fleet, is that correct or not?

[Tr. 1185] A. Yes.

Q. Specifically, did Mr. Hughes give you any of the reasons that Mr. Schwartz gave you?

A. No, I don't recall discussing it in any detail with Mr. Hughes.

What I told him, I remember I tried to tell him and did tell him that I felt TWA had good and substantial need for all 30 airplanes.

Q. Did he disagree?

A. He simply went on another subject, as I recall it, Mr. Hayes. We just didn't go into any depth, as I remember.

Q. You mean he did not express agreement or disagreement!

A. I just don't recall-

Q. He just changed the subject?

A. -the detail of that now.

Q. In the last sentence to which I have directed your attention on page 22, you state that you consistently maintained that TWA required all 30 aircraft to fulfill its needs through 1960.

Mr. Hayes: Let me withdraw that because I had another question on the sentence before, Mr. Brownell.

ITr. 11861 The Special Master: Yes.

Q. With respect to the sentence before, you identified Messrs. Fellows, Rourke and Cocke as the people to your knowledge who had expressed their opposition.

Did you discuss the subject with Mr. Leslie?

A. Yes, I did.

Q. Do you recall that conversation?

A. Well, there were—like in most of these instances there were numbers of conversations relating to equipment throughout this period, and I don't recall right now any one specific conversation.

Q. In any conversation in the latter part of 1959 or 1960, did Mr. Leslie express to you opposition to a reduction in the fleet from 30 to 20 Convairs?

A. I don't recall him opposing it, no.

Q. How about Mr. Pierson?

A. I don't recall him specifically opposing the reduction.

Q. How about Mr. Taylor?

A. I don't remember discussing this with Taylor. He wasn't, as I recall it, directly involved.

Q. Do you know whether any one of these gentlemen, Messrs. Leslie, Pierson or Taylor ever expressed to any Toolco representative opposition to reduction of the [Tr. 1187] fleet?

A. I don't remember knowing of specific instances, no.

Q. Do you know of any general instances?

A. I don't remember any is what I am really trying to say.

# [Tr. 1261] By Mr. Hayes:

Q. Mr. Rummel, with respect to any of the Avro planes, did anybody on behalf of TWA make any test flights of any of them?

Mr. Williams: What do you mean by test flights!
You mean did they fly in them—
Mr. Hayes: That's right.

Mr. Williams: -try them out?

Mr. Hayes: That's right.

A. I flew in the Avroliner at Hughes' request.

Q. Did you pilot it?

A. No, I flew in it. Hughes piloted the aircraft.

Q. Hughes piloted it?

- A. Hughes piloted it and I was flying with him.
- Q. How many such flights were there in the Avroliner?
- A. There was one—oh. Well, there was—when you call a flight, there were numbers of takeoffs and landings. There were one series of such flights if you like.
- Q. For the record, is it customary to test planes by making a series in succession of takeoffs and landings?

  [Tr. 1262] A. Well...

The Special Master: This is for purposes of determining whether or not you are going to procure the plane?

Mr. Hayes: That's right.

A. -very broadly, yes.

Q. Was that the kind of test flying you meant that Mr. Hughes made on the Avroliner?

Mr. Williams: I don't understand that.

Mr. Hayes: Takeoffs and landings, to test it.

Mr. Williams: Yes, but is it tied in with your former statement that this was for the purpose of procurement, in connection with procurement of aircraft?

Mr. Hayes: That's right.

Mr. Williams: Is that the kind of test landing and takeoff that Mr. Hughes did!

The Witness: I could answer it this way. Avrowas led to believe that we were interested in procur-

ing the plane, and one of the purposes of the test was to learn more about the plane.

Q. Did Mr. Hughes or you or anyone else on behalf of TWA test fly the supersonic?

ITr. 12631 A. That was a paper plane.

- Q. The Boeing 377, I gather the impression from your deposition that that was the same as the Stratocruiser, am I right or wrong in that?
- A. It was called the Stratocruiser.
- Q. That was a plane that was being marketed, to be marketed by Boeing shortly after the war?
  - A. Yes, shortly after World War II.
- Q. To what extent did airlines purchase and use the Stratocruiser, do you know?
- A. Pan Am had a fleet, United had a small fleet, BOAC I believe had some of them and others. I don't recall specifically at the moment.
- Q. Do you know when the last sale was made by Boeing of a Stratocruiser to a commercial airline?
  - A. Not exactly, no.
- Q. Can you fix approximately the date!
  - A. No, I don't think so.
  - Q. Was it before 1950†
- A. I—it is highly likely that it was, yes, but as to when Boeing made the last sale I just—I can't testify.
- Q. Did Boeing offer to the airlines any airplane between its offers of the Stratocruiser and its offers of ITr. 1261 the 707s?
- A. Well, the answer I just gave was in reference to the original series that were called the Stratocruiser or the 377 series.

They subsequently did show up with drawings of—that illustrated turboprop conversion possibilities.

- Q. Was that plane ever built and sold to a commercial airline?
  - A. I don't recall any having been either sold or built.
- Q. So that after the Stratocruiser, was the 707 the first plane that Boeing offered to commercial airlines? I mean offered as a plane that could be flown, not a paper plane.
- A. I believe the 707 series was the first commercial plane produced.
  - Q. After the Stratocruiser?
- A. Yes.

But as I testified before, getting there was an evolutionary process. There were all sorts of things that could be called offers.

(Tr. 1268) • • • Q. With respect to the Bristol Britannia you gave rather a considerable amount of testimony on your deposition, Mr. Rummel.

The time so far as I can figure out from your deposition stretched over the period from 1952 to 1958.

Does that jibe with your present recollection?

A. I don't have any clear recollection.

ITr. 1269] Q. You testified in substance that you had various and sundry communications with Mr. Hughes in connection with the Britannia and also with TWA, but I did not find any identification of who in TWA you had communications with respect to the Britannia.

Can you recall now?

- A. I recall a meeting during which the Britannia-
- Q. I am sorry.

A. I recall a meeting during which the Britannia was discussed with a Mr. Burgess and Mr. Leslie and Mr. Weller. A number of reports I wrote included the Britannia which were given a fairly wide distribution in the company.

And as in most cases, I tried to keep my immediate boss pretty well advised.

I don't think of anything else at the moment.

- Q. Has Mr. Weller been identified for the record! I don't know offhand.
  - A. Yes.
  - Q. He has?
  - A. Yes.
- Q. You mentioned a discussion with Messrs. Burgess, Leslie and Weller.

Did that have to do with the consideration as to Tr. 12701 whether TWA should acquire the Britannia!

- A. It had to do with what TWA should recommend to Mr. Hughes be acquired.
- Q. What was the outgrowth of that meeting in that regard?
- A. Well, let me say the meeting considered more airplane programs than just the Britannia, and I don't recal at the moment what the result was.

I believe it was the multiple type recommendation, however. That is, a recommendation with alternates.

- Q. My notes indicate that there was a decision finally arrived at which was not to acquire the Britannia.
  - A. Yes.
- Q. Was that decision arrived at at this meeting that you mentioned among Messrs. Burgess, Leslie and Weller!
- A. Well, as I said, I don't recall what the outcome of the meeting was in that respect.
- Q. Do you know whether or not Mr. Hughes or anyone on behalf of TWA test-flew the Britannia?
  - A. Well, I flew in the Britannia on tests. I didn't fly it
  - Q. Was Mr. Hughes the pilot?
  - A. No.

Tr. 12711 The airplane had been delivered to Montreal so Hughes could fly it, but as far as I can recall now he did not, although he might have.

Q. Were there active negotiations with the Bristol people looking toward the possible acquisition of the Britannia?

A. Extremely active.

Q. The deposition shows that you participated in them.

A. I did.

Q. What was the extent of your participation in these negotiations?

A. Well, I conducted quite a few of them.

Q. With whom?

The Special Master: You mean with whom from Bristol?

Mr. Hayes: Yes.

A. With the Bristol people?

Q. Yes. You don't remember their names. It is not important. I'll forget their names.

Was anybody else from TWA present at any of those negotiations?

A. Other than possibly members of my staff, I don't recall anyone else being present.

ITr. 1272 Q. Did Mr. Hughes participate in those negotiations?

A. I was in close touch with Hughes during the negotiations and reflected our mutual positions.

Q. Did the negotiations get beyond the technical aspects of the Britannia?

A. Well, I view deliveries, price, availablity and release of planes by other lines to commit early delivery as going beyond the technical and those things and others were included.

- Q. They were included?
- A. Yes, they were.
- Q. You mentioned a plane designated the Convair YB-60 which you define in your deposition as a commercial version of the YB-60, a large eight-engine jet variant of Convair's B32.

Would you tell us your participation in anything having to do with the Convair YB-60?

A. Well, I don't recall my deposition clearly, but I believe I covered a lot about that in it. I'm not sure at the moment how repetitive I would be. It is a long story.

Mr. Williams: I was there, but I haven't read it

TTr. 12731 Q. To refresh your recollection possibly you testified that it was from 1946 on, that it had to do with discussions with Convair concerning the development of jet aircraft and that you worked with Mr. Hughes in it and had discussions with Mr. Franklin and with the Convair people at Fort Worth and others, that you reported your findings to Mr. Hughes.

That is a brief summary of what I get from your deposition, Mr. Rummel.

A. I believe my deposition also mentioned Mr. Odlum.

Q. It may have.

A. I could be mistaken.

Mr. Williams: What additionally do you want from him on that, Mr. Hayes?

- Q. Was this a plane which was still in development or was it one that had been built or was ready to be built?
  - A. It was considered for development.
- Q. Was it being offered to other airlines as well as to
  - A. Not to my knowledge. No, although-

Q. I am sorry.

A. Not to my knowledge, although I think everyone [Tr. 1274] understood that it would have to be to be a viable project for Convair at some point in time.

At that time I don't believe it had been offered to anyone.

Q. Would you describe it as a paper plane during the period of your discussions with Convair?

A. Well, the answer, it being the commercial variant,

partly. Partly.

- Q. Under whose supervision, if anyone's, did you work in connection with any contacts you had with Convair concerning the YB-60?
  - A. Mr. Hughes.
  - Q. Anyone in TWA?
  - A. No.
  - Q. Nobody?
  - A. Nobody.
  - Q. Did you report your findings to anyone in TWA?
- A. I can't be that specific, but I believe I undoubtedly reviewed the results finally with Mr. Collings.
- Q. Did the discussions with Convair get beyond the technical aspects of this proposed plane?
  - A. Yes.
  - Q. To what extent? What do they include?
- A. Deliveries, price, operating costs, how it would [Tr. 1275] likely be used.
  - Q. Anything else!
  - A. That's all that comes to mind.
- I thought you were thinking up something else to say.
   I did not know.

Did you make studies in that connection?

A. I don't remember any formal studies. I conferred with Convair and pushed pencils around a little bit, and the came to be relusions.

I green you could say that I discussed it.

- Q. You reported your conclusions to Mr. Hughes, according to your deposition?
  - A. Yes, to Mr. Hughes and also to Mr. Odlum.
- Q. How did Mr. Odlum come into the picture? Was that when Atlas Company owned Convair?
  - A. I don't remember the dates that well.

Odlum was closely associated with Convair. He may have been running Convair at that point in time. He either was running it or was chairman. I'm just not that clear at the moment.

- Q. Did anybody else in TWA other than your department make any studies or recommendations concerning the YB-601
- A. Not to my knowledge. My department wasn't [Tr. 1276] involved very much in this one.
  - Q. Just yourself personally?
  - A. Well, primarily.
- Q. I don't know whether I asked you—I don't think! did—did Mr. Hughes or anybody on behalf of TWA fly the plane of which the YB-60 was a commercial variant, but which was never built?
- A. The YB-60 was not the commercial variant, Mr. Hayes. This was a commercial variant of the YB-60.
  - Q. Thank you for correcting me.

Did anybody fly, test-fly the YB-60, Mr. Hughes or anybody on behalf of TWA?

- A. I don't know, but I don't recall having heard that he did.
  - Q. You never flew in it?
  - A. No. It was there but it wasn't in flying shape the
- Q. You mentioned in your statement the Convair Model 110. You state that it was an experimental plane.

Tell us your participation looking forward to the possible acquisition of the Convair 110.

A. Here again, I just don't recall my earlier deposition.

Q. There is very little in your deposition I can [Tr. 1277] tell you. Forget your deposition now at the moment. I am asking the question from your memory today.

The Special Master: Did you refer to his prepared statement or to his deposition?

Mr. Hayes: To his prepared statement.

The Special Master: Where does that appear?

Mr. Hayes: In Annex A.

The Special Master: Yes, I see it.

A. Well, I reviewed specifications, calculated operating cost characteristics, considered airport characteristics in relation to the performance of the plane.

I'm quite sure that we ran route studies, that is, the

application of the plane to our routes.

I had numbers of meetings with the Convair people during which the plane was discussed during its earlier formative time, and later on as it emerged.

That's all I recall.

Q. Can you fix the time of the discussions with respect to the Convair 110?

A. I can't exactly, no. It would have been the later very late World War II years and immediate period following the war.

Tr. 13051 • • • The Special Master: Proceed.

Mr. Williams: You made certain requests of us and

Mr. Rummel is now prepared to answer the question
with respect to Defendants' Exhibit 9 for identifica-

tion, and the other question related to Exhibits 10 through 14.

Mr. Rummel.

Tr. 13061 The Witness: I reviewed the—my letter of May 11th that Mr. Hayes requested and found no reference either in it or in the attachments to it with respect to American jets.

On Defendants' Exhibits 10 through 14, I reviewed those to determine whether or not they contained specific recommendations from me as to the number of jets to be procured.

I found no such recommendations in those domments.

I might also comment on that, if you will allow me to.

The Special Master: Yes.

The Witness: I know a great part of my activity then was spent in developing studies and other related data which—all of which permitted me to make recommendations which I did during that time period.

The Special Master: As to numbers?

The Witness: Yes.

I can only conclude that these various studies have been somehow lost or thrown away with the passing of time. A lot of them were informal. They were studies—they were sometimes on miscellaneous pieces of paper. They were evolved through a period of time [Tr. 1307] and, of course, many of these things become obsolete with the passing of time or they changed as we moved on with our considerations.

In other words, a substantial part of these were informal and additionally many of my recommendations were of an oral nature, and this may account for the fact that they are not in the file.

# Cross examination (cont'd) by Mr. Hayes:

- Q. Is it your recollection that you did make studies in writing which contained recommendations as to numbers of jets to be acquired or not?
- A. I am sure that was done, Mr. Hayes, but I am not clear on the exact form, as I indicated earlier, that these things took. A lot of the recommendations were oral.
- Q. So you said. I am trying to find out what your recollection is as to the extent to which you made recommendations in writing.
  - A. I think I have covered that.
  - Q. I am trying to find out-

Mr. Williams: Can you say anything in addition to what you have already said?

The Witness: I can't think of anything more to add.

Tr. 13081 Mr. Williams: We have produced, Mr. Special Master, everything from the file we have found.

# By Mr. Hayes:

Q. Is it your recollection that any written study or recommendation that you made was ever sent to the Tool Company?

A. I don't remember sending the Tool Company written recommendations on numbers of aircraft.

As I indicated earlier, their standing instructions were not to put things in writing to Mr. Hughes.

Q. To anybody else in the Tool Company. I am not thinking only of Mr. Hughes.

A. I don't recall any specific study.

Q. Do you recall generally any studies that you submitted to the Tool Company?

A. I don't know how to add to what I have already said, Mr. Hayes.

Q. To whom in TWA did you submit any written studies or recommendations that you made?

The Special Master: As to number of planes to be procured?

Mr. Hayes: As to number of planes.

Mr. Williams: This has all been covered, Mr. [Tr. 1309] Brownell.

The Special Master: I will allow the question.

A. I just can't be that specific, either. I certainly know to whom they would have been reasonably sent, but to remember that, I would have to recall the specific studies and I just don't. I know all these things went on.

Mr. Hayes: Have you any report with respect to the documents, Mr. Williams, that we talked about yesterday morning?

Mr. Williams: Mr. Tenney will report.

Mr. Tenney: I think that we may be able to produce substantially all of the specific documents you spoke of this afternoon.

Mr. Hayes: Thank you very much. I should report, I suppose, for the record, Mr. Brownell, that my partner, Mr. Perkins, had a further conversation

yesterday, I am quite certain he said with Mr. Thompson, who is in the law firm, I believe, of Mr. Olsen—I don't believe he is company counsel—

Mr. Tenney: I believe you are correct.

Mr. Hayes: Mr. Thompson advised—there was some third person on the phone, too, who was a Boeing representative, whose name escapes me at the moment—ITr. 13101 that he expects to have a list of all documents which he can send to Mr. Perkins to look over, in the light of the subpoena, he hopes before the end of next week.

He also indicated that he thought, without a commitment of any absolute nature, that he would be able to have whatever documents there are sent with a certificate of an officer before August 1st.

The Special Master: Fine.

Let me say right there that if there are any emergencies in this coming month, that either counsel considers requires action by me, if you get in touch with my partner, Mr. Castles, he will know where I will be and can be communicated with.

Mr. Hayes: I think counsel can agree on one thing and that is a hope that there will be no such emergency.

The Special Master: I certainly hope not either.

# By Mr. Hayes:

Q. Mr. Rummel, I direct your attention to page 4 of your prepared statement, the paragraph beginning under the heading "Early Jet Developments." You might read that paragraph to yourself first.

A. I have read it.

(Tr. 13111 Q. Can you name the companies with whom you and the members of your department-I mean manfacturers of aircraft—were in close touch with during the period covered by that paragraph?

A. Yes. Douglas Aircraft Company, Glenn L. Martin Company, Consolidated Vultee, which later became Convair, Pratt & Whitney, Wright, Wright Aeronautical. Did

I mention Boeing?

The Special Master: No.

Q. You did not.

Boeing. Possibly others. That's what comes to mind at the moment.

Q. Would DeHavilland be one of the aircraft manufacturers?

A. I was in touch with DeHavilland, yes, from about, oh, roughly maybe 1950, 1951.

Mr. Williams: You did not mention Lockheed. Is Lockheed in it?

The Witness: Lockheed should be mentioned There were-

The Special Master: Did you confine that to do mestic companies?

Mr. Hayes: No, I did not. The statement is not confined to domestic companies.

(Tr. 1312) The Witness: We were also in touch with other English companies, that's right—Handley Page.

Mr. Hayes: I am sorry!

The Witness: Handley-Page, Vickers, Avro of England, Rolls-Royce, Bristol Engines and Sud. Mr. Williams: That is French.

### A-651

### Rummel-Cross

The Witness: That is French. Possibly others. That's all I seem to recall right now.

## By Mr. Hayes:

- Q. Were those communications with the companies you mentioned all related to the possible development of jet aircraft or jet engines for use in aircraft?
  - A. Not exclusively, no.
- Q. Take Pratt & Whitney, Wright, Rolls-Royce and Bristol Engines. Were your communications with those companies limited to engines?

Mr. Williams: What do you mean by that, Mr. Hayes?

Mr. Hayes: He speaks about his keeping in close touch with the manufacturers of aircraft and engines in order to keep abreast of significant new developments in the commercial aviation field. I am trying to separate those that he was communicating with with respect to engines from those he was communicating with with respect to aircraft.

Mr. Williams: Did those companies just make engines?

The Witness: The principal product that they manufactured in which we were interested generally was engines or engine accessories or engine installations, depending on the manufacturer.

The discussions, conferences embraced more than simply the power plant. We talked about use of power plants, installation of power plants, the kind of airplanes that would be built with engines, and so on.

## By Mr. Hayes:

- Q. But none of those four companies was the manufacturer of aircraft, was it?
  - A. No.
- Q. The other companies you mentioned were all manufacturers of aircraft, were they not?
- A. Well, they manufactured aircraft or proposed to manufacture airplanes, yes.
- Q. What you are covering in paragraph 13 were the developments that took place in the early period before any jets were offered actually for sale by any manufacturers; is that right?

The Special Master: What is the reference ITr. 13141 to paragraph 137

Mr. Hayes: I am sorry. We have numbered the paragraphs.

The Special Master: You mean the bottom of page 4?

Mr. Hayes: The bottom of page 4. I am sorry, Mr. Brownell. For ease of reference we have numbered them. I have fallen into the habit.

The Special Master: All right.

- A. The word "offered" is somewhat vague. These were discussions and reviews of very early, I would say preliminary proposals, the exploration of which was apparently aimed for determining whether or not we or the manufacturer should be sufficiently interested in formally offering these designs.
- Q. These were all preliminary discussions looking toward a possible aircraft?
  - A. I'd call them exploratory.

- Q. Exploratory?
- A. That's why the end date here-
- Q. I am sorry.
- A. The end date here is not clear-
- Q. No, it is not clear to me. I was going to ask you when.

[Tr. 1315] A. (continuing) —to me in this paragraph.

- Q. That was the next question I was going to ask you. Up to what period did you intend to cover by this paragraph, Mr. Rummel?
- A. We never stopped keeping in close touch with them, so there isn't any end period with respect to that.

The Special Master: I am reading the next paragraph in which you say basically that you meant to stop in 1951 and it looks as though the next paragraph is intended to cover 1951, 1952 and 1953.

Mr. Hayes: That's the impression I got from the statement.

The Witness: I believe that's correct. I was concentrating on that one paragraph alone.

## By Mr. Hayes:

- Q. When was the first date, first time, first year—I do not mean precise date, Mr. Rummel—that there were any exploratory discussions with Douglas with respect to jets?
  - A. I am quite certain it was 1946.
- Q. Over how long a period did those discussions continue?
- A. I can't be sure now, but I would guess possibly six months.
- ITr. 13161 Q. You mentioned Martin. Did Martin have in mind some time during this pre-1951 period the manufacturer of jet transports?

- A. Excuse me, Mr. Hayes, I think the 1951 date that we put in the record a minute ago probably isn't correct. I don't think I had contacts with all of these manufacturers prior to 1951. In my answer I was going beyond that period. I am sorry to interject that, but I thought I better clear that up.
- Q. My question was instead of trying to find it in the record, whether Martin at one time proposed the manufacture of jet transports.

Mr. Williams: In the pre-1951 period was the way the question was phrased.

Mr. Hayes: That is right.

I will broaden the question now, in the light of what Mr. Rummel said that he is going beyond 1950.

## By Mr. Hayes:

- Q. Part of the early jet developments that you had in mind in this section of your statement, was Martin one of the companies which proposed at one time or another the manufacture of jet transports for airlines?
  - A. Yes.
  - Q. Can you fix the approximate time?

ITr. 13171 A. Not exactly, but I believe exploratory discussions occurred in 1948.

Q. Do you know about how long they continued?

A. I don't recall exactly. Over a period of months at that particular time.

Q. Was there a later time?

A. I am a little vague on that. I think so. But I am not positive.

Q. Did Martin ever actually engage in the manufacture of jet transports for airlines?

A. No.

Q. Do you know when they abandoned their apparent intent to manufacture jet transports?

A. No. I know when they went out of commercial business.

Q. I am sorry.

A. No, I don't.

Mr. Williams: He said "I know when they went out of commercial business."

Q. When was that?

A. Aproximately 1952, I believe.

Q. You mentioned Convair. When were the first exploratory conversations held with Convair concerning any jet transports?

[Tr. 1318] The Special Master: That includes its predecessor company?

Mr. Hayes: Yes. I will use Convair to include Consolidated Vultee as well.

A. About 1947, approximately.

Q. Did Convair continue throughout the period into 1956 considering the manufacture of jet transports for airlines?

A. It is hard for me to say exactly what they considered. I am sure they never lost sight of the possibilities, but they were not constantly and continuously discussing jets with us throughout that period.

Q. But did Convair representatives from time to time throughout the period have discussions with you with respect to possible manufacture of jet transports?

A. Well, from time to time, yes.

Q. Can you now fix the times, Mr. Rummel?

A. Not precisely, Mr. Hayes. During the time they were taking with the development of the 240 series they didn't devote much attention to jets, as I recall it.

Q. Can you fix the time that they did, so far as you know, as a result of your contacts with them, devote considerable time to the possible manufacture of jets?

A. Well, they devoted a great deal of time beginning [Tr. 1319] in 1954 and continuing on through the period we

are talking about.

Q. Can you fix the time when you had your first exploratory conversations concerning jets with The Boeing Company?

A. I can give you an approximate time, I believe.

Likely in either 1947 or 1948. Possibly 1948.

Q. Did discussions with The Boeing Company by you continue regularly or not from the time of your first exploratory discussions with them?

A. There were intermittent reviews and discussions, not

necessarily on a regular interval.

Q. At what point in time did serious discussions begin between you and The Boeing Company with respect to jets!

The Special Master: In the sense of intensive?

Mr. Williams: "Serious" is a rather difficult word.

Mr. Hayes: That's right.

The Special Master: Intensive.

Mr. Williams: Intensive.

Mr. Hayes: Yes. Something other than exploratory is what I am trying to find out.

(Tr. 1320] A. I can't really be exact. Boeing had-Boeing did present numbers of preliminary designs which I believed at the time were serious exploratory efforts on their part, and certainly the discussions were intense and things were seriously considered.

It was after they embarked on the development of the Model 80 Experimental Jet that they came to the position

of offering delivery positions and the like. I am troubled with the vagueness of the question, frankly.

Q. I am trying to get you to fix the time when this development took place.

A. Which one?

Q. I am speaking about after the Model 80.

A. Oh, when the Model 80 development took place?

Q. I thought you indicated that it was after the Model 80 that they offered or discussed delivery positions. I am trying to have that date fixed, if you can recall, by year, only.

Mr. Williams: When did Boeing first offer you delivery positions on any type of jet aircraft?

The Witness: I believe it was 1954, where there might have been further discussions.

# By Mr. Hayes:

Q. Take DeHavilland. When did you have the discussions [Tr. 1321] to which you refer in this paragraph with the DeHavilland Company?

A. I can't be sure. Mr. Hayes. DeHavilland representatives would pass through, and I would greet them and talk.

The first personal visit to DeHavilland, I think, was in 1951, if I recall correctly.

Mr. Williams: The first personal visit you made to DeHavilland?

The Witness: That I made, yes. I think it might have been 1952, but about that time period.

# By Mr. Hayes:

Q. Did discussions continue from time to time between you and DeHavilland representatives from 1951 into 1955 or 1956?

A Yes.

Q. You mentioned Lockheed. Can you fix the time when you first had exploratory discussions with Lockheed?

Pardon me. Let me withdraw that.

The DeHavilland discussions had to do with jets, is what I had in mind. I don't know whether I made it clear in my question or not.

A. Yes.

Q. Now to go to Lockheed, if you will, when did you [Tr. 1322] first have exploratory discussions with Lockheed!

Mr. Williams: We are talking about jets now. Mr. Hayes: Yes.

A. Well, we had discussions on jet possibilities at Lockheed very likely early in 1946.

The first preliminary designs, as I recall it, were con-

siderably later.

Q. How much later? A. I can't be sure, but I think maybe 1949 or 1950.

Q. Were either the early discussions or the later ones to which you referred as preliminary designs concerned with pure jets or jet props or both?

A. I was talking about jets.

Q. Pure jets?

A. Well, I thought that's what you were inquiring into.

Q. That's right, it was. I wanted to be sure.

A. Yes.

Q. Did Lockheed, during the period up to 1960, manufacture any jets other than jet props?

A. Lots of them.

Q. Pardonf

A. Yes, indeed

Q. For commercial use?

CTr. 1323 A. No, noncommercial use.

- Q. That's what I mean, for airlines.
- A. No.
- Q. None?
- A. No.
- Q. When did Lockheed first propose to you any discussions with respect to a jet propeller plane?

Mr. Williams: Proposed discussions? Read that question.

Mr. Hayes: When did they propose to Mr. Rummel any discussions with respect to a jet propeller airplane. When did they start or when did they begin?

Mr. Williams: When did they first propose to discuss?

The Witness: When did they propose to me rather than my proposal to them?

Mr. Williams: Yes.

Read the question: It's a little confusing to me. It is proposing discussions. It isn't—

Mr. Hayes: Why don't I withdraw it?

## By Mr. Hayes:

Q. When did you first have any discussions with Lockheed with respect to a jet propeller airplane?

ITr. 13241 A. That is a different question and I will try to answer it. I can only approximate. I think around 1951 or 1952.

- Q. You mentioned Handley-Page. Is that a British Company?
  - A. Yes.
- Q. When did you have the exploratory conversations with respect to jets with Handley-Page!
  - A. The early 1950s, I believe.

- Q. Did Handley-Page ever manufacture jet transports for use by airlines?
  - A. They hadn't at that time, no.
  - Q. Did they down through 1960†
  - A. I don't believe so.
- Q. You mentioned Vickers. That also is a British company, is it not?
  - A. Yes, it is.
- Q. When did you first have exploratory conversations concerning jet transports with the Vickers Company?
- A. Well, I think—I am guessing a little, but I believe 1950 or 1951.
- Q. How long did those conversations continue or discussions?
- A. Well, I had discussions with Vickers occasionally ITr. 13251 through the years, not all on the—they weren't all the same series of discussions.
  - Q. Down through the end of 1956?
  - A. Yes.
- Q. Did they all have to do with the manufacture of jet aircraft?
  - A. No.
- ITr. 13261 Q. With what kind of aircraft did they have to do?
  - A. Turboprops.
- Q. When were the first discussions with Vickers with respect to turboprops?
  - A. I believe the same.

I might point out that these discussions were not of a continuous nature. There was a period of time when Vickers withdrew their jet design and were rather quiet about jets. When they had a new one, then we talked about it and so on.

- Q. Did the Vickers Company manufacture any pure jets during the period ending in 1956?
  - A. Yes.
  - Q. For what airlines?
  - A. No, these were for the military.
  - Q. No, no, I am speaking of commercial airplanes.
  - A. Oh.
  - Q. Commercial transports.
  - A. Yes, they did.
  - Q. For what airlines?
  - A. I'm not sure.
  - Q. Any American airline?
- A. No.
- ITr. 1327 Q. Bring it down to the end of 1960. Do you recall what commercial jets were manufactured by Vickers and for what airlines?
  - A. The same answer would be applicable.
- Q. Do you recall how many pure jet transports Vickers manufactured down to the end of 1960?
  - A. No, not really. Very few.
- Q. They were actively engaged beginning some time in the 50s in the manufacture of turboprops, were they not?
  - A. Yes.
- Q. You mentioned Avro, England. We have had considerable testimony as to the Avro Canada developments.

When were your first exploratory conversations with respect to jet transports with Avro England representatives?

- A. Well, I don't recall exactly, but I believe it was during the early '50s some time.
  - Q Do you recall how long they continued?
- A. Not very long. The answer is no, I don't.

Q. Did Avro England during the period ending at the end of 1960 manufacture any commercial jets for airlines!

A. I don't believe so.

ITr. 1328 Q. Lastly you mentioned Sud. Were you referring there to the Caravelle?

A. Yes.

Q. Is that the only jet airplane that Sud was proposing or manufacturing up to 1956 or up to the end of 1956?

A. It was the only jet commercial that they were manufacturing—

Q. That is what I am talking about.

A. -that I can recall.

Q. When were your first exploratory conversations with Sud Aviation?

A. About the same time period during the period I can't be that specific now.

Q. You mean in the early '50s?

A. Yes, sir.

Q. Did they continue from time to time through to the end of 1956?

A. Yes.

Q. Were there any other aircraft manufacturers other than those you have already mentioned which as I recall my original question seemed to be limited to the period prior to 1951, were there any other manufacturers of aircraft with whom you and the members of your department ITr. 13291 kept in touch after 1955 or 1956 than those you have already mentioned? 1951, I mean. I'm sorry.

A. Well, I explained earlier that the answer I gave with respect to the numbers—or the identification of the manufacturers should not be construed as applying strictly to

the period prior to 1951.

Q. I understand that.

- A. And I believe you are asking now if there are any other manufacturers—
- Q. Than those you have already mentioned up to the end of 1960, with whom you or the members of your department kept in touch.
  - A. This is with respect to jets?
  - Q. Yes.
- A Well, there may have been, but I don't recall them now.

ITr. 1351] • • • Q. Referring again to Annex B-1, Mr. Runmel, and to page 2, you set forth there certain recommendations in the upper part of the page.

Have you read it?

Mr. Williams: Let's read the whole page.

Mr. Hayes: You do not have to read what is ITr. 1352 attached.

Mr. Williams: We won't read the schedules, but let us read the first part.

Q. You state there, Mr. Rummel, that your recommendations were made on the assumption that TWA's financial situation will soon permit executing an equipment program designed to maintain TWA's current industry position and perhaps eventually to gain industry leadership.

Did you at that time have any knowledge as to TWA's then financial position?

A. I undoubtedly had some familiarity with the state of affairs in the corporation.

- Q. Did you know at that time whether or not TWA's financial position was such as to enable it to follow the recommendations contained in Annex B-1?
  - A. I don't remember now, Mr. Hayes.

## Rummel Oross

Q. Did you know at that time whether in the past TWA when undertaking major equipment programs had the assistance of the Tool Company?

> The Special Master: You mean financial assist-ARICAT

Mr. Hayes: Yes, financial assistance.

A. Well, as I testified earlier, I frequently didn't know who was undertaking them or who they would ITr. 13531 finally wind up with with respect to who did what in this area. This is not my area.

Q. You were not party to any financial arrangements between the Tool Company and TWA with respect to equipment acquisitions?

A. I don't recall being party to arranging for financing with respect to the equipment program.

Q. Is that true during the whole period down to the end of 19601

A. Yes.

Q. Annex B-2 attached to your statement, Mr. Rummel, is a report on what you found from various British aircraft manufacturers and airlines.

Was this prepared in its entirety by you, Mr. Rummelf

A. Well, I composed the report, Mr. Hayes, I certainly didn't develop all of the technical data that's reflected in the report.

Q. Who did!

A. Well, I charged—some of the data I see here was obtained from the manufacturers to some extent, some was developed by members of my staff.

Then, of course, some by me, including the summary and

conclusions.

ITr. 13541 Q. Did members of your staff go with you on your visit to England when this data was gathered, the data contained in Annex B-2?

- A. I'm not sure, Mr. Hayes. It is possible that one did.
- Q. When you refer to some of the data being prepared by members of your staff, was that prepared subject to your instructions to them after you returned from the trip?
- A. Yes, Mr. Hayes. I authored this report and put it together. I'm simply trying to point out that each and every number here is not mine.
  - Q. I understand. Much of the-
  - A. The drawings, I didn't make the drawings.
- Q. Much of the material in Annex B-2, for example, are drawings that you obtained from the manufacturers or airlines as the case might be, is that correct?
- A. I guess it is possible. I don't remember obtaining this particular stuff from airlines. Let me look at it.
  - Q. I said airlines or manufacturers.
  - A. Okay, yes.
  - Q. To whom did you submit this report, Mr. Rummel?
- A. I believe it went to the same people that the ITr. 1353 earlier report that I discussed earlier went to.
- Q. The only one you mentioned specifically, if I recall rightly, was Mr. Collings.

Mr. Williams: That's the only one he mentioned specifically. He said selected or selective top management.

Mr. Hayes: That's right. I am speaking of the names.

Mr. Williams: Selected group of top management and Collings.

A. I just can't be positive, Mr. Hayes, as to exactly who it went to.

Q. Do you know whether a copy of Annex B-2 was sent to the Tool Company?

A. I'm not entirely sure. I think so, but I couldn't-I wouldn't want to state that as a positive fact.

Q. Did you receive any comments from anyone concerning this report which is Annex B-2?

A. Well, I'm quite sure I did, Mr. Hayes, but I—I don't remember them in detail.

Q. You do not recall any particular comment that you received from anybody?

A. Not any more than I indicated earlier with ITr. 1350 respect to the other report.

I guess I do remember one now, and that was Mr. Collings concurring subject to some question he had on finding that it would be awfully—terribly, terribly wise—

Q. I am sorry.

A. That it would be terribly wise, that it would be a good idea, to undertake experimental operations with a jet or two as I had suggested in this report.

I think he indicated a preference that this be done on an industry basis rather than TWA undertaking the expense alone, but this was compatible with my recommendation.

But that's sort of a flash in my mind. I don't remember the others.

Q. Do you know whether anyone submitted written comments in connection with Annex B-2?

A. No, I don't.

Q. At the bottom of page 2 of your summary and conclusions, and the paragraph carries over, I think, to the top of the next page, the paragraph beginning at the bottom—maybe you would like to read it first.

Have you read it?

A. Yes, sir.

ITr. 13571 Q. You mentioned in that paragraph that Boeing has already announced plans to proceed, that Lockheed and Douglas have transports in preliminary design stages and that North American and Consolidated have evidence interest and then you say, "None has actually approved expenditures necessary to carry developments through the prototype stages however."

Does the "none" include all of those named five com-

A. I would so take it. I assume that's what I had in mind at the time.

Q. Yes, that is what I am trying to find out.

On the top of the next page, you express the hope that no less than two United States manufacturers will shortly proceed with the development of jet transports for commercial use.

What was the reason for your hope that there would be no less than two?

A. Well, it was my firm conviction then and it is now that a competitive situation between manufacturers builds better airplanes for both manufacturers and for the airlines. And I felt that by having two we would eventually wind up with better transports.

Q. Do you know whether or not Mr. Hughes agreed with ITr. 1358] you in the belief that two or more manufacturers were better than one?

A. I certainly had the impression that he did.

As I testified earlier in the pre-trial work we frequently specifically sought a competitive situation. What I said about design was equally true with respect to negotiation. We like to negotiate concurrently with more than one manufacturer when we could.

Q. I direct your attention, Mr. Rummel, to Annex B-3 to your statement.

Was this report prepared entirely by you other than the technical data, charts and so on, or did you prepare even those?

A. I personnally composed and authored this report.

However, as I indicated technical data contained in it

came substantially, I believe, in this instance from outside.

Q. From outside, do you mean—

A. Outside TWA.

Q. -Chiefly from British European Airways.

A. I believe so, yes.

Q. This is, I notice, Part 1 of report entitled "Operations with turbo-powered transports."

Do you notice that on the front page, the cover [Tr. 1359] page, Mr. Rummel?

A. Yes, I do.

Q. Do you know to whom copies of Annex B-3 were sent?

A. No more clearly than the others, I presume it was

the same group.

- Q. If I asked you the same questions as I did with respect to Annex B-2 as to whom they were sent and any comments you received, if you could recall, would your answer be the same?
  - A. Yes, sir.
- Q. Except, of course, that Mr Collings' comment is related to Annex B-21

A. No, I'm sorry.

Mr. Collings' comment that I referred to was related to B-1.

Q. Was it B-11

A. Yes.

Q. I am sorry.

Do you have any recollection as to whether a copy of Annex B-3 was sent to the Tool Company?

A. I'd be awfully surprised if it was not sent to the Hughes Tool Company, but I am unable as I sit here to specifically recall that.

ITr. 13781 Q. You mentioned in this paragraph as I noted before, that you were particularly interested in the rapid progress being made by the Boeing Company.

Were any other manufacturers of aircraft making pro-

gress during the same period?

A. Well, I'm sure that they were all making some progress.

- Q. Were you interested in the progress they were making?
- A. Certainly.
- Q. Who were those other manufacturers who were making progress at that time?
- A. Well, Boeing was cutting metal and the others were principally cutting paper.

They would have been Douglas, Convair, primarily.

- Q. Did you follow the developments at both Douglas
- A. We followed progress to the degree that we could at Douglas, and we were closely associated with Convair during 1954 and beyond and possibly late 1953.
- Q. Were you particularly interested in the progress that Convair was making?

A. Yes.

ITr. 13791 Q. Why was it that you did not mention that in your prepared statement?

Mr. Williams: I object, your Honor.

Mr. Hayes: It is a perfectly proper question, Mr. Special Master.

Mr. Williams: I don't think there is any reason for including every airplane company who he is interested in. He says he was particularly interested in the rapid progress being made by the Boeing Company.

Mr. Hayes: I understanding what he said.

Mr. Williams: It does not mean he is not interested in the progress being made by other companies. Now he says why didn't he mention that he was interested in the rapid progress made by Convair.

The Special Master: Overruled.

A. It was the word "particular" that Mr. Hayes used to which I responded and what I meant to imply was that we were closely following paper developments at Convair. Indeed, we were participating with Convair in those developments.

What I am trying to point out here is that we at that time were tremendously impressed with what Boeing ITr. 13801 was accomplishing and the experience they were obtaining, and the fact that they were taking the bull by the horns and proceeding with actual developments of aircraft.

Q. When you say "we," to whom are you referring in this context?

A. I'm talking about myself and my associates, primarily those in TWA.

Q. Will you name them, please?

The Special Master: Those outside of your own department?

Mr. Hayes: Yes.

- A. Mr. Damon was interested, Mr. Collings, myself, I believe Mr. Cocke.
  - Q. Anybody else! Pierson!
- A. Quite possibly, Mr. Hayes, I don't recall it specifically right now.
- Q. By the way, it has been established on the record that Mr. Damon is dead.

Is Mr. Collings still alive?

A. Mr. Damon-

Mr. Williams: No. Now you are talking about Mr. Hayes?

Mr. Hayes: Yes, now.

ITr. 1381] A. Oh, now?

Q. Yes.

A. I thought you were referring back to the date, to the time period I was talking about. He was very much alive then.

Q. No, now.

A. Yes, he is alive.

Q. Mr. Leslie!

A. Yes.

Q. Mr. Cocke?

A. Yes.

Q. Mr. Cocke is with TWA, is he not?

A. Yes.

Q. Mr. Pierson?

A. Is he alive? Yes. Is he with TWA, no, but he is on the board.

Q. While I am on this subject, is Mr. Thomas still

A. To my best knowledge, yes.

Q. He is not with TWA, though?

A. No.

Q. Is Mr. Hall still alive?

A. Yes.

Q. Is he with TWA?

Tr. 1382 A. No, sir.

Q. Mr. Fellows is still alive?

A. Yes.

Q. Is he with TWA?

A. Yes.

Q. Mr. Allen still alive of Boeing?

A. Yes.

Q. Is he still with Boeing?

A. Yes.

Q. Is Mr. Dunn still alive?

A. Yes.

Q. Is he with TWA?

A. Yes.

Q. Did others besides you in TWA have a meeting, to your knowledge, with Boeing during the 1953 to 1955 period?

A. Yes.

Q. Whof

The Special Master: Outside of your group.

The Witness: Outside of my group?

Mr. Hayes: Yes, that always means outside of his department.

A. The answer would still be yes.

Mr. Williams: Do you mean, Mr. Hayes, ITr. 1383] whether Mr. Rummel was there or not?

Mr. Hayes: If he knows that they had meetings with them. That is all I want to know.

I asked him who they were outside of himself and his department.

The Witness: Mr. Collings, I believe, Mr. Damon. I just can't remember who might have sat in on some of the TWA meetings we had with Boeing personnel. It is possible that others may have at times than those just in my department.

- Q. Did Mr .-
- A. And-
- Q. Oh, pardon me.
- A. Excuse me.
- Q. Go ahead.
- A. I'm pretty sure that it was during this time there were meetings that involved Mr. Hughes.
- Q. You mean meetings between Mr. Hughes and Boeing?

  Is that what you mean?
  - A. Yes.
  - Q. Anybody else in TWA that you know of?
- A. Well, I'm sure there were, Mr. Hayes, but I can't pinpoint it.

[Tr. 1384] The reason I'm sure is that I recall one meeting and one trip to Boeing to actually look at and inspect the early construction work on the prototype 80, but I don't remember just who all was in that party.

- So, I—I think that exhausts my immediate recollection anyhow.
  - Q. Do you recall whether Mr. Hughes was in that party!
  - A. Yes, he was not.
  - Q. I'm sorry!
- A. He was not.
- Q. Was Mr. West in communication with Boeing during this period?
  - A. This period I believe is up to early 1954.
- Q. No, I think my question was from 1953 to 1955.
- A. Oh, through 1955?

Q. Yes.

A. Yes, sure, West was in touch. And Hughes was, too. There is no question about it.

Q. Was Mr. Cocke involved in any such meetings?

A. I don't specifically recall Cocke being involved in meetings with Boeing.

He was involved in meetings with me re Boeing.

Q. In these meetings with whom did you meet at ITr. 1385] Boeing?

Can you identify the Boeing personnel involved?

A. Gee, I'm quite sure I did about a week ago when you were talking about the same thing, Mr. Hayes.

Q. I don't think we were talking about this at any time, Mr. Rummel.

The Special Master: Can you recollect any of them?

The Witness: Yes, I think so.

During—spanning the period of time, rather than a distinct meeting?

The Special Master: Yes. The Witness: Mr. Penell—

Q. What name is this?

A. Penell. I did go over this. Mr. Penell, Mr. Olsen, Mr. Connelly, George Sanborn.

Q. Mr. Allen?

A. I think there is a fellow named Bell.

Q. Bell?

A. I think so. I'm not positive that was his name although I recall his face.

Yes, Mr. Allen.

Q. Mr. Beall?

[Tr. 1386] A. Mr. Beall.

Did I mention Penell

Q. Yes, you did.

Mr. Williams: Yes, you started out with that.

A. Rouzie and Steiner. George Schier. I don't believe I mentioned Mr. Schier previously.

Q. No, you did not.

Mr. Williams: What about Beall and Bell?

Mr. Hayes: He mentioned them. The Witness: I mentioned them.

Mr. Williams: You mentioned them?
The Witness: Just now I did, yes.

Oh, Ed Wells.

Undoubtedly there are some others, Mr. Hayes. That's all that seems to pop into my mind.

- Q. Did anyone at TWA other than you and members of your department have meetings with Convair during this 1953 to 1955 period?
  - A. Yes.
  - Q. Who?
- A. When you say to 1955, I am taking this again to mean through 1955.

Q. That is right.

Tr. 1387 A. Well, I explained that earlier.

Within TWA we had a selected group of representatives from other departments which participated with me in—at various times in working on the various design efforts that led finally to the 880, and additionally, of course, Mr. Hughes was in touch with Convair, as I also testified to previously, Mr. West, I am fairly certain that Mr. Collings joined us at some of the—at least part of the time at some of the Convair meetings that were held in Kansas City.

4 Anybody else that you recall now!

A. Not that I recall at the moment, Mr. Hayes.

- Q. Who were the Copvair people with whom these meetings were held?
  - A. I believe I testified to that before, but-

The Special Master: Have you any names to add!

The Witness: Excuse me, sir!

Mr. Hayes: I don't think it was ever asked before

Mr. Williams: Yes, it was. Sandy Coogan and others.

The Witness: Ralph Bayles.

Mr. Hayes: I don't think I heard that name [Tr. 1388] before.

The Witness: He was there.

Mr. Williams: He said seven or eight such people in addition.

- Q. Can you now identify any others?
- A. I don't think of any in addition.
- Q. Take Douglas, who besides you was in touch with Douglas during this 1953 through 1955 period?

A. Douglas advised me that Mr. Hughes had been.

I take it just to be clear that your questions are relating to jets because we were in touch with Douglas in many areas because we operated Douglas equipment.

Q. Certainly. I am talking only about jets.

A. I can't be sure, Mr. Hayes.

Q. You cannot recall any other TWA personnel who communicated with Douglas during this period?

A. I'm sure there was some communications but I can't at the moment recall a specific occasion sufficiently to testify directly.

Q. With whom in Douglas did you have your meetings!

A. Schogram.

Mr. Williams: How do you spell that?

[Tr. 1389] Q. What name?

- A. Schogram, Ira Schogram.
- Q. How do you spell it?

The Special Master: S-c-h-o-g-r-u-m.

The Witness: I think it was a, g-r-a-m. Ed Burton.

Q. Burton?

A. Burton, B-u-r-t-o-n, Art Raymond, Don Douglas, Sr., members of his staff.

And here again I am sure there were others. Those are the ones that come to mind at the moment.

Q. Was there any time during this 1953 through 1955 period when any effort was made on the part of TWA to get delivery positions from Boeing?

Mr. Williams: From Boeing?

Mr. Hayes: Boeing.

Mr. Williams: 1953 through 1955.

- A. Yes, I believe there was.
- Q. When was that?
- A. I don't believe I can be quite that specific.

I think it was during this period. Probably the early part.

Q. Do you recall who attended on behalf of TWA?

A. I believe Mr. Damon and myself and I believe, CTr. 13901 but I'm not 100 per cent, I think Mr. Collings was there.

- Q. Who attended on behalf of Boeing, Mr. Rummel?
- A. Wellwood Beall.
- Where did this meeting take place?
- A. I believe it was at the hotel—I'm not sure which one now—in San Francisco.

Q. Can you give us the substance of what was said at that meeting?

A. Well, the substance, as I recall it, of the meeting was that Boeing spread out some drawings and discussed—of airplanes, and discussed the merits of the designs as they saw them briefly.

And I believe TWA expressed interest in some sort of an arrangement with Boeing which would give TWA rights of first refusal to jet positions at such time as Boeing was in a position to offer firm positions.

And I'm not entirely sure of that—it isn't that detailed but it was a right of first refusal for early positions sough, as I recall it, by TWA during this meeting.

Q. Do you recall how many preferred delivery positions were sought by TWA at that meeting?

A. No. sir, I don't specifically at this time.

[Tr. 1391] I have the impression that whatever number it was it related to getting a competitive edge on our competitors. That is, we were after a first run sequence of positions, and I don't think whatever the number was, as I now recall it, was intended to indicate that we wanted all of the first positions for any fleet that was being thought of.

Q. What did the Boeing people say with respect to that request of the TWA people?

A. My recollection is there was a verbal agreement that came from the meeting between Boeing and TWA to that effect.

Q. What was the nature of the agreement, do you remember?

A. Well, as I indicated, the nature of it was, as I recall it, that Boeing verbally said that before they closed any deals with others they would give TWA the opportunity for first positions.

- Q. Was Mr. Hughes at that meeting by the way?
- A. No, sir, he wasn't.
- Q. Did I understand you to say you cannot recall the exact time of this meeting?
- A. No, I think it was in the earlier part of the period we are talking about, but I don't remember the [Tr. 1392] exact time.

In other words, I think it was either in, oh, possibly 1953, very, very early 1954. But it was—I'm quite sure it was early. I don't think it was 1952 but I am not completely sure even about that. But it was very early in this—

- Q. That would place it before the Model 80 was constructed then?
- A. Yes, although I can't recall at the moment-
- Q. Which you said was the summer of 1954.
- A. —what relation the Model 80 was to that. I think I did indicate the preliminary work of the model did take place over a fairly extended period of time.
- Q. I said before the Model 80 was flown which you indicated was correct in 1954.
- A. Oh, yes. I'm trying my best to pinpoint it for you and that's about as good as I can do. I think that probably was the case.
- Q. When the Tool Company finally placed orders for planes for TWA, was the oral agreement that you understood that Boeing had made, kept by Boeing?
- A. No.
- Q. It was not?
- A. No.
- Tr. 1393] It was my understanding Boeing called it off prior to that. In fact, I believe it was prior to Damon's leath.

- Q. That would have placed it in 1955, at least prior to 1956?
  - A. Yes, that it was called off.

[Tr. 1397] Q. If you could find one airplane which would operate at optimum capacity, both internationally and transcontinentally, would it be an advantage to TWA to have such an airplane?

A. Well, I don't know any way to answer that without referring to specific proposals. One design—it would have been more unlikely to, unreasonable to expect one design to be optimized for both areas because of different range requirements.

We were seeking the best compromise through various design approaches and studies and evaluation of those.

Q. Would it be an advantage of TWA to have a single airframe with different engines for its two different kinds of routes?

A. Mr. Hayes, that's what Douglas offered and my recommendation was that we buy Boeings.

Q. Would it or would it not be an advantage?

A. I thought the Boeings were better even though they didn't have one common airframe.

ITr. 13981 Q. I did not ask you about Boeings. I asked a different question, Mr. Rummel.

Would it be of an advantage to TWA to have a single airframe with different engines for the different routes?

Mr. Williams: I object to the question. The witness has already explained, already answered it. Other things being equal I suppose the answer would be yes, but the witness has just said they were not equal.

So he can't answer the question.

The Special Master: Is it inherent in your question other things being equal would this have been—

Mr. Hayes: Certainly.

Mr. Williams: Other things being equal would it be an advantage to have one airframe on which you could hang different engines.

The Witness: If all things were equal—

Mr. Williams: Yes, that's what we assume.

The Witness: —I would prefer one airframe with

The Witness: —I would prefer one airframe with one engine, certainly, but they aren't all equal.

# By Mr. Hayes:

(Tr. 13991 Q. Was it your purpose in your negotiations with Convair to get such a kind of airplane?

A. No, not necessarily.

- Q. Were you seeking to get a competitive advantage over your both domestic and international competition by your efforts at Convair?
  - A. Well, I took it that was the idea.
  - Q. The answer is yes to the question.

Mr. Williams: Yes.

A. Yes.

Q. How long did these efforts at Convair continue?

A. They continued through the Model 20, I would say, that I discussed heretofore.

Q. Which you mentioned heretofore, I believe, is more accurate, Mr. Rummel.

Mr. Williams: We won't quarrel with that.

Mr. Hayes: It was mentioned.

Q. When you say it continued through the Model 20, through what models did it continue until it reached the Model 201

A. Well, the ones I described heretofore, I failed before to describe the Model 19 because I didn't remember it that well and I still don't.

Models 18, 19 and 20. And the forerunner [Tr. 1400] exercises to Model 18, of which there were many.

Q. Will you tell us briefly what the forerunner exercises were?

The Special Master: It is in addition to your previous testimony.

Mr. Hayes: On this, Mr. Brownell, there has been a mention of the Models 18, 19 and 20 with the tiniest description. I want to get the details of this negotiation.

A. Well, the first meeting I remember that introduced all this, and I don't remember exactly when it was, but it occurred in Las Vegas, with Mr. Hughes. I was asked to come out and Mr. Hughes and Convair were there, I met with them, and this started the exercise toward exploring various design proposals to see what could be developed which in my view would best satisfy TWA's need.

These were highly secret meetings, and I was advised not to discuss the details of these and the similar secret meetings even with Mr. Collings.

We literally held meetings at various intervals all over the country—

Q. When you say "we," to whom are you referring!
A. Me. Convair and I. There was—I can't [Tr. 1401]
remember exactly now, but there were some other meetings
later with Hughes, including the one in Beverly Hills. It
is hard for me to fix the exact time. The intervals between
meetings were to allow Convair—to permit time for Convair to sharpen their pencils and make new lines on paper.

One meeting occurred in Washington, D. C., one at my home in Kansas City—I simply disappeared from work at the time for a couple of days—one in Seattle. There may have been, there probably was one or two in Convair, but I don't remember quite that specifically.

One of the men I didn't mention before who participated in some of these meetings was a fellow named Ken Ridler.

Q. Is he with TWA or Convair?

A. No, Convair.

I was the sole TWA man in most of these early exploratory meetings, and as I recall it now the doors weren't open to others in TWA until we started down the Model 18 road.

Q. You said these were highly secret meetings. What was the reason for the secrecy?

A. Well, I, at the time, thought it was entirely for industrial security in order to find and develop an ITr. 14021 airplane with superior characteristics for TWA and presumably one in which we would have favorable early delivery positions to the exclusion of deliveries to our competitors.

Q. Who instructed you to maintain the secrecy?

A. Mr. Hughes.

Q. You respected his wishes in that regard, I assume?

A. Yes, I did.

Q. You told about—

A. I don't recall revealing a thing on it, although I might have mentioned to Collings that I had a special project that would take me from the office, and I think he understood what that was.

There was in a sense communication but nothing specific.

These are the preliminary meetings you are talking and you said nothing was disclosed you thought in A until the Model 18 appeared?

A. Well, I don't recall anything at the moment, Mr. Hayes.

Q. Tell us about the Model 18.

The Special Master: About the plane itself?
Mr. Hayes: Yes.

ITr. 14031 The Special Master: Or about the negotiations?

Mr. Hayes: Whatever he knows about it. I want to know the story about the development of the Model 18.

A. I'm quite sure that that was covered in the pre-trial deposition.

Mr. Williams: It was in the deposition. Mr. Hayes: It may very well have been.

Mr. Williams: I don't know how much has been read into the record or incorporated.

Mr. Hayes: I don't think anything.

Mr. Williams: It has not been touched on in cross-examination.

Mr. Hayes: It has not.

Mr. Williams: It has been extensively covered in depositions.

Mr. Hayes: I intend to examine the witness on it now. I don't have to go by his pre-trial deposition at all.

The Special Master: Except as such parts that have been admitted in this record.

Mr. Williams: That is right. I am not presently in a position even to object because I [Tr. 1404] don't remember, Mr. Hayes, what has been gone into.

Mr. Hayes: We have excluded from the portions of the deposition that were put in, as we stated, any thing having to do with the Convair or Boeing jets.

It might be on a particular page there may have been some reference to it. We were offering as to other airplanes.

Mr. Williams: Go ahead.

Q. Will you tell us your best recollection now as to what was done toward the development of the Model 18 and by whom?

A. I'm a little vague, but as I recall it by the time the Model 18 became identifiable as such, and by that time it was a pure jet, I was asked by Mr. Hughes to go to the West Coast and undertake—that is, San Diego—and to undertake negotiations with Convair.

Convair made it very clear after I arrived that they had numbers of discussions with Mr. Hughes on the Model 18. I think this was probably during—either real late—I think it was probably early 1955. I'm not sure of the exact time now. It could have been late 1954 but I believe it was early 1955.

I obtained during some of the fairly frequent [Tr. 1405] calls with Mr. Hughes Mr. Hughes' permission to bring in a few other technical representatives which I mentioned heretofore from TWA to aid and assist in the negotiations of the specifications. I requested Mr. West, with Mr. Hughes' concurrence, to come to San Diego to aid in the contractual discussions. I was in charge of both.

And during the course of negotiations and technical explorations, the design was altered from time to time to—in an effort to make a better design or to have better capabilities. And during this period, the contract was—I will any substantially took form and at least in my view considerable progress had been made.

Now, I don't know how much stuff you want, Mr. Hayes.

C. I want the whole story.

A. It transpired over a long time and it is slightly time consuming.

If you want it I guess I am supposed to give it to you.

# [Tr. 1416] • • • By Mr. Hayes:

Q. Would you, please, Mr. Rummel—you can do it all in one answer, if you want—take the three Models, 18, 19 and 20, and tell us what kinds of planes they were, what stage of development they had reached and what was the intended use by TWA of those planes?

Mr. Williams: Can we take it up model by model! Mr. Hayes: Yes, sure.

Mr. Williams: Let us start with Model 18, ITr. 14171 then.

A. Model 18 evolved through a period of time into a low-wing, all-metal, highly swept commercial transport, powered or to be powered by—with J75s, as we called them in those days, four engines.

The wing was swept to a higher angle than either the Douglas or Boeing proposals. As I recall it now, it was slightly faster. And at the time it was initially developed, it appeared to be somewhat better than the other contenders.

I don't recall its exact capacity, Mr. Hayes. I believe it was slightly larger than the then existing Boeing proposal. It was intended to be used in both transcontinental—or, let's say, it was intended to be suitable for use in both transcontinental and international service, as I recall it, for TWA, but the manufacturer, of course, recognized that such a plane could provide a very broad potential market base for him, since it would encompass domestic and international

competitors finally of TWA, in terms of their likely application in the event they should buy it.

The Model 19-

Q. May I ask a question before you go to the Model 19, Mr. Rummel? You said something that was not to be— ITr. 1418I I have forgotten your exact words—better than the other contenders—

Mr. Williams: He said it was somewhat better than the other contenders.

Q. Whom did you mean by "the other contenders"?

A. What I said was that, but I also said that at the time the 18 finally became the 18, what I intended was a comparison between the 18 and the Boeing and Douglas proposals as they then existed, which at that time, as I now recall it, and I believe this is certainly the case, were powered with J57 engines and were what we termed suitable for domestic service, even though the Boeing-Douglas teams both felt their designs were fine for international service, and so represented them.

Q. I just wanted to identify who the contenders were.

A. Boeing and Douglas.

The Model 19 was an interim consideration, that is, between the Model 18 and 20, and I just can't seem to recall it clearly. I think that it had six rather than four engines, but I just don't remember the details.

The effort at that time was to see what could be done to get a step ahead of the then existing contenders, the same ones. That is, their latest—our understanding [Tr. 1419] of their latest designs.

Now, the Model 20 was a substantially larger plane than the Model 18. It, too, was considered in various forms. It had, as I recall it, six engines, J75s with the—I believe

the two principal forms considered were the long tube and double-deck. It had substantially more wing area than the Model 18, being a larger plane.

The one which finally evolved was a double-decker, powered by six J75s, and of substantially greater capacity than either the Boeing or Douglas proposal that had existed at that time.

Mr. Williams: Lifting capacity, carrying capacity or distance or all three?

The Special Master: I thought you meant passenger carrying capacity.

Mr. Williams: I thought so at first.

ITr. 14201 The Witness: It had greater fuel capacity but I didn't mean that.

The Special Master: Off the record.

(Discussion off the record.)

The Witness: I meant greater payload capacity. It did have greater lift, of course.

Q. Was that like the Model 18 intended for use by TWA on both transcontinental and transatlantic services? I mean the Model 20.

A. Well, yes, it was part of the same series that I referred to earlier. It was the last one of that series.

It was also intended quite obviously to be sold to others in the event it would have been built by Convair.

[Tr. 1424] • • • Q. Do you recall the designation that aircraft had as a military tanker! Let me see if I can help your recollection. KC-135!

A. That aircraft I don't think had any designation. The ones that were produced as a result of getting the contract—

Q. That's what I meant.

A. —which came from that early development were called KC-135s. You realize I am sure they were different from the prototype.

Q. Oh, I assume so.

In the paragraph which begins near the top of page 6, you state that we engaged in numerous discussions with Boeing representatives throughout 1954 and thereafter. You mention in addition to yourself and Mr. Hughes, TWA employees, including Mr. Damon, then presi- [Tr. 1425] dent, and numerous Boeing employees.

You have already told us that during this same period there were negotiations of one kind or another going on at Convair with respect to the different models which you mentioned.

Were negotiations of one kind or another also going on with Avro during this period?

Q. Yes, there were several meetings which I described earlier with Avro, some of which took place during this period.

Q. I just wanted to fix the time, Mr. Rummel.

By the end of 1954, had any decision been made by TWA management as to which type of jet aircraft it would acquire and made by which manufacturer?

A. I doubt if we

Q. I am sorry.

A. I doubt now that we had made a firm choice as to what—which kind of airplane we would like to see procured for TWA.

I believe at that time we tended toward the Boeing. We later or at some point in time, came to a clear technical preference. By that I mean merely—not purely the technical but the operational and economic and so on for Boeing, but I don't remember exactly when [Tr. 1426] that occurred. I believe it was after that.

The Special Master: May I inquire for my own information?

Mr. Hayes: Surely. Lasilant on F. Jakes 171 halfs

The Special Master: Does the end of 1954 have some special significance that escapes me?

Mr. Hayes: I am sorry. I did not hear you.

The Special Master: You asked that question up to the end of 1954.

Mr. Hayes: That's right.

The Special Master: Does that date have some significance that has escaped me?

Mr. Hayes: No. I just wanted to go little by little because 1955 has considerable different ideas or different pertinences, maybe, is the word.

(Tr. 1428) • • • A. This is one of the—this reflects one of the practices that I referred to in the early part of the testimony. It was Boeing's desire to configure their planes to meet as many requirements of as many major customers as possible in order to sell airplanes to those customers.

Q. Were they at this time, January 12, 1955, engaged in communicating with various potential customers so they could get as much agreement as possible on the type of plane to be manufactured by them?

A. This letter, the third paragraph clearly indicates that they had conferences and discussions under way with Pan American for some time.

- Q. That's right, for two weeks you say?
- A. Two weeks.

horrowers such \$1904.

Q. Were they communicating with other airlines besides Pan American and TWA so far as you know?

A. At or about this time, and I can't be sure of the precise time, they were talking to American Airlines, and I'm confident to other airlines as well.

Q. When you say you are confident, do you mean you

have a recollection that they were talking?

Tr. 1429 A. I recall Boeing indicating that they were not only reviewing their proposals with airlines here but also some of the airlines abroad.

Q. In the next paragraph you state—

A. My difficulty is in recalling for sure the specific ones other than American.

Q. In the next paragraph you mention that you advised—

Mr. Williams: How does that start, "I told"? Mr. Hayes: Yes.

Q. That you advised the Boeing representatives that you had been committed to certain work on the west coast which would make this impractical on a large scale basis for perhaps as long as two months.

What was the work on the west coast to which you were

committed?

A. I believe two things. The six—well, it would then have been the 1449A and the Convair.

Q. You mean the Convair negotiations-

A. Yes.

Q. —which led to the 18, 19 and 20 eventually?

A. I believe so.

Q. Then in the last paragraph you speak about Pan Cr. 14301 American wanting the first 25 jets and TWA's representative wanting the first 15 jets from Boeing.

Can you tell us more about that so far as you recall any-

thing now!

Mr. Williams: Break it up. First you asked about Pan Am wanting 25 and the second question relates to TWA wanting 15.

A. Well, the—as I recall it now, the statement on 25, reflects Boeing's advice, and the TWA representative refers to Mr. Hughes. We had the rule never to use his name in writing. I guess I mentioned that before.

And I'm not certain now whether this particular sentence alluded or referred specifically to what Boeing said then or whether it included what I then understood from Hughes.

It could have been either one and I'm just not that clear as I read this now.

CTr. 14311 Q. But is it your best recollection that at that time Pan American wanted the first 25 airplanes and TWA wanted the first 15 airplanes from Boeing?

A. No, not really. It is my understanding that Pan Am wanted the first 25 and Hughes had taken the position he wanted the first 15 for TWA.

I, however, don't remember the details, the sequence of the two positions.

Q. Do you recall when it was that TWA took the position, or Hughes, that the first 15 Boeing jets should go to TWA?

A. I don't remember TWA taking a position for Mr. Hughes. Is that what you said?

The Special Master: No, or Mr. Hughes.

The Witness: Oh, I'm sorry.

Well, no, this letter—I don't remember exactly, except it is clear from this letter it was prior to January 12, 1955.

Q. Is it your recollection that Mr. Hughes had been negotiating with Boeing for delivery positions prior to that time?



A. Yes, it is my recollection that Hughes had been in touch with Boeing just as I testified heretofore.

Q. Had any other TWA representative communicated [Tr. 1432] with Boeing prior to January 12, 19 concerning delivery positions on Boeing jets?

A. Well, I've already testified to that. I mentioned an

earlier meeting in San Francisco a while ago.

And, of course, I had had numbers of meetings with Boeing people from time to time, my associates. I've already testified to that.

The Special Master: Discussing numbers to be ordered?

The Witness: Primarily, I think, discussing the airplane designs, discussing the availability of planes, attempting to persuade Boeing that TWA should be the first or among the very first customers for competitive reasons.

I don't recall definitizing numbers of fleets, potential fleets with Boeing during these discussions. I'm quite sure that I would have left that to Mr. Hughes.

# By Mr. Hayes:

Q. Did you ever take a position, prior to January 12, 1955, with Boeing with respect to what delivery positions should be accorded TWA?

Mr. Williams: You personally! [Tr. 1433] Mr. Hayes: Yes.

A. I personally, repetitively tried to persuade Boeing that when they built the transport that the first position should go to TWA.

Q. The first position.

A. Positions.

Q. How many! That sales the sales

A. I don't remember that clearly, Mr. Hayes. I was trying to persuade Boeing that TWA was a prime customer and that we should be the first with jets.

Q. What did the Boeing representative say to you in

response to your request?

A. Well, I—there were—I don't remember specifically. There were numbers of such occasions, but the general inpression I have is that they were generally sympathetic and encouraging in the sense they were trying to cultivate interest in their planes, but that they were generally non-committal except for the occasion I mentioned earlier.

I think that their theme was, that's fine, the way to get it

is to order it.

The Special Master: May I ask a question?

Mr. Hayes: Surely.

The Special Master: Did I understand ITr. 1434 you to say that one argument you used with Boeing to get prime delivery positions was that TWA was Boeing's prime customer?

The Witness: No, that we were a prime— The Special Master: A prime customer?

The Witness: -potential customer.

I remember at one point trying to persuade Boeing that since we were both a domestic-international carrier, that by tailoring the planes more specifically to our requirements than others, they would more nearly satisfy the maximum number of their potential customers which was another reason why they should be working with us as opposed to working more importantly or more completely with others.

I don't remember all the details, Mr. Hayes. This

went over—these things span numbers of meetings in a fair period of time.

ITr. 14931 • • • Q. Would you say there was a respectable number of airline engineers who at September 12, 1955, did believe that even the 707 would suffer from hidden penalties?

A. I don't believe that by the time the commercial designs were evolved into the 100, 300 series, that that was an important consideration.

Q. Had they evolved into the 100 or 300 series by September 12, 1955?

A. I don't believe so, but as I indicated before, I'm not completely sure. It could have been. But I don't think so, however.

Mr. Hayes: I offer in evidence, Defendants' Exhibit 26 for identification for the same purpose.

Mr. Tenney: We will waive our objection with that limitation.

The Special Master: Received.

(Defendants' Exhibit 26 previously marked for identification, received in evidence, as of this date.)

Mr. Hayes: I ask that there be marked for identification page 68 of American Aviation, [Tr. 1494] dated October 10, 1955. This is Defendants' Exhibit 27.

The Special Master: Mark it for identification.

(Page 68 of American Aviation, dated October 10, 1955, marked Defendants' Exhibit 27 for identification, as of this date.)

# By Mr. Hayes:

Q. I show you, Mr. Rummel, Defendants' Exhibit 27 for identification, and I ask you to read the first three paragraphs.

A. I read the first three paragraphs, Mr. Hayes.

Q. Do those paragraphs accord with your recollection as to Douglas' decision at or about the time of this Article, October 10, 1955?

Mr. Tenney: I object to any such question until he has first been asked what his recollection is on that subject.

The Special Master: Split it into two, if you like Mr. Hayes: There is nothing improper about this question.

The Special Master: No. Let us try it the other

[Tr. 1495] What is your recollection independently of the subject matter covered by the first three paragraphs.

The Witness: I am a little vague, Mr. Brownell, on the exact dates, but as I indicated earlier I recall that Douglas and Boeing both swung over to the J75s about the same time.

The airlines generally during this period of time were dissatisfied with the range characteristics, at least for international services with the jets that Douglas and Boeing both had proposed and were pushing for more power.

I did not on reading this recall the difference between the J75 augmented and the one that's augmented still more. I don't doubt, though, that it might have been part of it at the time.

# Rummel Cross

# By Mr. Hayes:

Q. I believe that this refers to an augmented J57.

A. Pm sorry. If I said J75, I meant to say J57.

Q. Do you have any recollection that the statements contained in the first three paragraphs of this article are inscurate?

(Tr. 1496) Mr. Tenney: I object to the form of that question.

Mr. Hayes: It is a perfectly proper question.

The Special Master: Do these three paragraphs refresh your recollection on the subject matter covered as to any matters in addition to what you have already testified?

The Witness: No, sir.

Q. I direct your attention, if I may, Mr. Rummel, to the third paragraph beginning in the second column starting with the words, "In a similar quandary. . . ." Please read it.

A. I read the paragraph.

Q. Insofar as you can recall, are the statements in that paragraph correct?

Mr. Tenney: I object to that question.

The Special Master: Does this refresh your recollection as to the matter covered as to anything in addition to what you have already testified?

The Witness: I think this generally accords with my recollection, Mr. Hayes, excepting this clause or phrase says, "In a similar quandary." I'm not quite sure what that's referring to.

#### Rummel-Cross

ITr. 1497 Q. Take my word for it, it refers to the quandary that Douglas was in as set forth in the first three paragraphs.

- A. Well, it doesn't accord with my recollection.
- Q. It does not?
- A. No.
- Q. As of October 10, 1955, your negotiations with Convair had gotten beyond the Model 18, had they not?
- A. Mr. Hayes, as I indicated, I'm not quite sure as to the date when we went to the Model 19 and left the Model 18 behind.

It could have been November. I'm just not that certain at the moment.

- Q. Let me ask you this question: As of October 10, 1955, had your conversations with Convair progressed to the point where you were considering the use of the J75 rather than the J57 engine?
- A. I answered that a few moments ago, Mr. Hayes. My recollection is we considered the J57 type for power plants much earlier than that.

The Special Master: J75.

The Witness: J75. I'm sorry.

# [Tr. 1509] \* \* \* By Mr. Tenney:

[Tr. 1510] Q. Mr. Rummel, in your direct testimony at page 4, you testified that you had been actively engaged since 1943 in all of TWA's major aircraft procurement programs. Mr. Hayes has asked you a number of questions on cross-examination about several of those programs.

I want to narrow the time period here to the period from 1954 to 1960, the end of 1960.

What was the extent of your knowledge of aircraft procurement programs for TWA during that period?

A. Well, I was intimately concerned with and involved in all of the important airplane procurement programs during that period.

Q. During that period, was there one person who made all of the ultimate decisions with respect to the acquisition of aircraft for TWA's use?

Mr. Hayes: I object. This calls for a conclusion, a matter of judgment. I have no objection to the elicitation of facts. This calls for a complete conclusion on the part of this witness.

The Special Master: Can you break that down into specifics?

# By Mr. Tenney:

- Q. Mr. Rummel, were you, during this period, acquainted with the manner in which decisions were made in the ac- [Tr. 1511] quisition of aircraft for TWA's use from 1954 to 1960?
  - A. I believe so, yes.
- Q. Were you acquainted with the manner in which final decisions were made as opposed to interim recommendations?
- A. Yes, I believe I was very close to that.
- Q. As a matter of practice, during that period, was there one person who exercised the final power of decision on the aircraft procurement programs for the use of TWA?

Mr. Hayes: I object, Mr. Special Master. This again calls for a conclusion.

Any facts the witness has, we are perfectly happy to listen to, not a judgment or conclusion by him. The Special Master: Overruled.

Mr. Hayes: He has already testified, for example, that he had nothing to do and had no knowledge concerning financing.

I am perfectly willing to have this witness testify to any facts in his possession, but I object to conclusions, to characterizations by him as to who did not have responsibilty.

Mr. Tenney: I will press the question, [Tr. 1512]
Mr. Brownell.

The Special Master: Overruled.

# A. Yes, Mr. Hughes.

Mr. Hayes: I move to strike the answer "Mr. Hughes." He was asked if there was one person, not to identify him.

The Witness: Well, I-

Q. Who was that person?

A. Mr. Hughes.

Q. In reaching his decisions, did Mr. Hughes consult others as to the type and quantity of aircraft to be acquired for TWA's use as far as you are aware?

Mr. Hayes: I object to this. Let the witness show a basis of his knowledge first.

Here again, we are getting into sheer conclusions by the witness.

The Special Master: Is that confined to other persons in TWA, that question?

Mr. Tenney: I did not so intend it, but I-

The Special Master: It might be well to break it down.

# By Mr. Tenney:

Q. Did Mr. Hughes, in reaching these decisions, con-ITr. 1513] sult other persons in TWA as to the type and quantity of aircraft to be acquired for TWA's use?

Mr. Hayes: Mr. Brownell, I am sorry, but I have to object to this question.

The Special Master: I will reserve decision until the line of questioning is completed.

- A. I believe on occasions he did, yes.
- Q. Did he consult you in that connection?
- A. Yes, on numbers of occasions.

Mr. Hayes: Can I have a running objection to all of these questions, so I won't have to object each time?

The Special Master: Yes. I think that's a good idea.

Mr. Hayes: Including the last one?

The Special Master: Including the last one.

# y Mr. Tenney:

- Q. Was there any person who Mr. Hughes consulted over than others in this connection?
- A. Yes, I believe so.
- Q. Who was that person?
- A. I believe he consulted me more than any other erson, in these respects.

The Special Master: What do you base that [Tr. 1514] opinion on?

The Witness: I base it on a number of things, including people at the time infrequently, some of

them indicating they had calls from Hughes, that is infrequently in relation to the number of calls that I had.

I remember at one time, a representative of the Tool Company indicated that he thought I had had more calls and contacts from Hughes than anyone within the Tool Company even during this period.

The Special Master: Who was that? The Witness: That was Mr. Cook.

The Special Master: Who was the source of your information within TWA?

The Witness: Mr. Cook indicated occasional contracts, Mr. Collings, Mr. Gilmore in a few instances. I had the impression that Mr. Thomas was in touch a few times.

The Special Master: Which one of them told you that you were consulted more often by Mr. Hughes than anyone else in TWA by Mr. Hughes?

The Witness: That was the Tool Company—oh, you mean within TWA?

The Special Master: Yes.

[Tr. 1515] The Witness: Well, this is my judgment from knowing of the number of calls made to me and having an understanding at the time as to the numbers of calls generally that he had made to others.

The Special Master: Is that the end of that line of questioning?

Mr. Tenney: No, sir, I have a number more on that line.

# By Mr. Tenney:

Q. Was there any particular person to or through whom Mr. Hughes' decisions on matters of procurement of

aircraft for TWA's use were communicated to TWA as a regular matter during that period?

A. Well, as a regular matter, they were communicated through me, although there were some exceptions. For example, as I testified, during the cutback in—or the intended cutback at that time on the Convair and Boeing orders from Schwartz and Cook.

- Q. When did Mr. Thomas become president of TWA?
- A. I believe it was the summer of 1958.
- Q. Did you ever have a discussion with Mr. Hughes in regard to the scope of Mr. Thomas' authority in connection with the acquisition of jet aircraft?

A. Yes.

Tr. 15161 Q. When did that discussion take place?

A. Well, I can't be exact, but it was shortly after Mr. Thomas became president.

Q. What did Mr. Hughes tell you on that occasion?

Mr. Hayes: I object, because it has nothing to do with this case, and this is a particular objection over and above my general objections that I have phrased so far.

We are concerned here with acquisitions that were supposed to have taken place, according to Mr. Rummel, in his position as an expert in 1955, 1956 and in January 1957.

Apparently there were no new contracts for acquisition from the time Mr. Thomas became president until the end of 1960. It is wholly immaterial what conversation Mr. Rummel may have had with Mr. Thomas in 1958. The contracts had then been made.

Tr. 1517 The Special Master: I think the cross-examination opened that subject up.

I will overrule the special objection.

Q. What did Mr. Hughes tell you in that discussion?

A. He told me that Mr. Hughes and I would continue to handle equipment as we had been, and that Mr. Thomas would serve as operating head of the airline, but that he would not be handling equipment.

- Q. Did you ever have a discussion with Mr. Thomas concerning the same subject?
  - A. Yes, I did.
  - Q. When did that occur?
- A. Some time after the conversation with Mr. Hughes. It was during my first meeting with Thomas.
  - Q. What did Mr. Thomas tell you?

Mr. Hayes: I object to this as hearsay.

The Special Master: Sustained.

Mr. Tenney: Mr. Brownell, Mr. Hayes has examined extensively as to the scope of Mr. Rummel's authority in TWA and as to his function in TWA during this crucial period of 1954 all the way to 1960.

I am asking the witness as to a conversation between the two people within TWA who would know most who had the responsibility in these matters.

[Tr. 1518] I think that this is completely within the scope of Mr. Hayes' cross and is designed to establish in connection with his so-called voir dire the authority and position of this witness.

Mr. Hayes: I still express the objection that it is sheer hearsay. Mr. Thomas is available.

The Special Master: I will sustain that objection.

## Q. You have testified-

The Special Master: Unless you can establish that it modifies the organization chart.

Q. At this period of time, Mr. Rummel, was there a formal organization chart of the kind that I showed you and was marked TWA Exhibit 11?

Mr. Hayes: I object on the ground that it was not a formal organization chart. It was a description of the duties of one particular officer.

Q. Was there a formal organization chart at that time?

A. I don't recall any. One of the first things Thomas undertook was to develop a revised organizational concept with associated charts, manuals and so forth.

I don't believe we had a clearcut organization [Tr. 1519] at this time.

- Q. Was the manual of organization or those pages of the manual of organization which have been marked as TWA Exhibit 11 developed while Thomas was president of TWA?
  - A. Yes.
- Q. Did the conversation that you had with Mr. Thomas in connection with the scope of his authority and the procurement of aircraft for use by TWA establish a different responsibility in that field than would appear from this manual of organization?

Mr. Hayes: I object on several grounds.

First, it does not appear when this supposed organization chart if it ever existed, did exist.

Secondly, again, it is sheer hearsay.

The Special Master: You can answer yes or no to that.

Did the conversation with Mr. Thomas effect a change in the organizational chart?

The Witness: No, not that I'm aware of.

The chart was developed subsequent to that.

Q. Let me rephrase my question.

As president of TWA, did Thomas ever state to ITr. 15201 you what the scope of your authority and his authority with respect to the procurement of aircraft for use by TWA was?

A. Yes.

Mr. Hayes: I object and move to strike the answer.

Please wait until I have a chance to object, Mr. Rummel. I ask that as a favor.

The Witness: I certainly will, Mr. Hayes.

Mr. Hayes: This is again sheer hearsay. Mr. Thomas is available.

The Special Master: Answer yes or no.

The Witness: Yes.

Mr. Hayes: I move to strike that answer, Mr. Brownell.

The Special Master: Overruled.

Q. What did he tell you on that occasion?

Mr. Hayes: Same objection, Mr. Brownell. As to hearsay, I mean.

The Special Master: Sustained.

- Q. Who was the last president prior to Mr. Thomas!
- A. Mr. Burgess.
- Q. When did Mr. Burgess become president of TWA?
- A. I think it was early 1957.

[Tr. 1521] Q. Did you ever have a discussion with Mr. Hughes with regard to the scope of Mr. Burgess' authority in connection with the acquisition of aircraft for TWA's use?

A. Yes.

The Special Master: Just a minute, Mr. Rummel.

The Witness: I am sorry.

Mr. Hayes: I object on the ground as I mentioned before in respect to Mr. Thomas. It is immaterial, it has nothing to do with the issues in this case that related to acquisition of aircraft in 1955, 1956, and January 1957.

The Special Master: Overruled.

The Witness: Yes.

Q. Do you recall when that occurred?

A. Well, shortly after Mr. Burgess was made president.

Q. What did Mr. Hughes tell you on that occasion?

A. He indicated that he would continue to handle equipment, and that I should continue to work directly with him on equipment matters, and that Mr. Burgess would serve as the operating head of TWA.

Mr. Tenney: In connection with Mr. Thomas, ITr. 1522 I have one other question. It is a little bit out of that line.

Q. You have testified, Mr. Rummel, in answer to a question by Mr. Hayes that conclusions of the Jet Planning Committee in the form of recommended plans and premises were communicated to Mr. Thomas for his approval.

To the best of your recollection, did Mr. Thomas ever fail

to approve any such recommendation?

A. To the best of my recollection, I don't recall Mr. Thomas not approving any of them.

The Special Master: Did your recommendations in any case that you can recall go to the board of directors of TWA?

The Witness: As far as I know now, Mr. Brownell, the plans and premises as such, did not.

At the same time, I just feel confident that some aspects of our planning must have been reviewed at these board meetings, but I certainly cannot presume to testify as to what occurred in these meetings.

The Special Master: You did not attend the board

of directors meetings?

The Witness: No, sir, I did not.

They were not submitted to the board by me.

# Tr. 1523 By Mr. Tenney:

Q. During the period 1954 through the end of 1960, which continues to be the period I am asking you about was there anyone employed by TWA, Mr. Rummel, other than yourself and those operating under your supervision, who was charged with an overall responsibility both for making a technical evaluation of aircraft being considered for use by TWA and for formulating recommendations as to the types and numbers of aircraft which TWA needed or should have for an efficient and economic operation?

A. No, although on occasions I consulted with others within TWA as I have testified to. It was incumbent on me to reflect the total company view insofar as I could.

Q. During your connection with TWA from 1943 to the present time, can you estimate, Mr. Rummel, the approximate dollar value, total, of the purchases of aircraft and associated equipment in which you have participated on behalf of TWA?

A. Well, not exactly.

Mr. Hayes: I-

The Special Master: Just a minute.

Mr. Hayes: I object to that question chiefly because the breadth of the verb partici- [Tr. 1524] pated. I don't know what it means.

The Special Master: I think you could clarify that

a bit.

Mr. Tenney: I will rephrase that question by withdrawing the verb participating.

Q. At page 4 of your prepared statement, Mr. Rummel, you state that you have been actively engaged in all of TWA's major aircraft procurement program.

Would you estimate the dollar value in the aggregate of the purchases of aircraft in which you have been engaged

actively since 1943?

Mr. Hayes: I object, Mr. Special Master, on the ground that again the words "actively engaged" are very strange words. It does not indicate by this question in what capacity the witness was actively engaged.

He could have been engaged as a merest subordinate, and if so, it is of no probative value in this case.

The Special Master: Overruled.

A. I cannot exactly, but it is over \$1 billion worth.

Q. Turning to page 6 of your direct testimony, Mr. Rummel, you testified that in the fall of 1955 you [Tr. 1525] recommended to Mr. Hughes that TWA should place orders or jet aircraft.

What were the last previous aircraft for which orders ad been placed for TWA's use?

A. The Lockheed Model 1449A, which was a turboprop. I believe that was committed late in December of 1954. Then it was changed into the 1649A later. And the contract or it I think was signed March—I believe March 1955, round March.

Q. In December of 1954, when the order was placed for the 1449A, were you consulted?

Mr. Hayes: I object if your Honor please. This goes beyond the scope both of the direct and of the cross. I don't see any redirect in this at all.

We are talking here in this case supposedly, and plaintiff has tendered a case, supposedly based on the acquisition of jet aircraft, not on orders that were placed with respect to piston aircraft.

Mr. Tenney: Mr. Brownell-

Mr. Hayes: Permit me just a second.

As a matter of fact in the trial briefs submitted by plaintiff they have deliberately ex- [Tr. 1526] cluded all piston aircraft. And this has been brought out on the record already was originally orderedas a matter of fact this morning I think—as a turbo prop and because of the inability to get engines was changed to a piston aircraft in early 1955.

So I object as beyond the scope of anything before your Honor at this hearing.

The Special Master: Overruled.

Mr. Tenney: I will repeat the question.

The Special Master: Do you want the question repeated?

The Witness: Yes.

Mr. Tenney: Would you repeat the question!
(The question was read.)

A. Yes, I was.

Q. Did you make a recommendation?

A. Yes, I did.

Q. What was your recommendation?

Mr. Hayes: I object. It is immaterial what his recommendation was and irrelevent.

Besides, we don't know to whom his recommendation was supposed to have been made.

The Special Master: You have reserved de-ITr. 1527 cision, have you not, whether you are going to make the motions on the voir dire?

Mr. Hayes: Yes, I tried to make that clear, Mr. Brownell. I guess I didn't. I have decided that instead of trying to separate voir dire from cross, they become so immeshed in the course of the voir dire that I will make all motions at the conclusion of cross.

The Special Master: Then I will overrule this objection.

Mr. Tenney: Would you state the question again, Mr. Reporter?

(The question was read.)

A. I recommended to Mr. Hughes on several occasions that the 1649A not be purchased. I am sorry. That the 1449A not be purchased.

Q. Did you recommend an alternative airplane?

Mr. Hayes: I object on the same grounds as I have already stated, Mr. Brownell.

The Special Master: Overruled.

A. Yes, I recommended that the DC-7C be procured for TWA's use, built by Douglas.

Q. Who was the chief executive officer of TWA at that time?

ITr. 15281 A. Ralph Damon.

Q. Who was the chief operations officer of TWA at that time?

A. John A. Collings.

Q. Did you tell them your views on this subject?

A Yes.

Q. Were you familiar with their views on this subject?

Mr. Hayes: I object. If he was familiar with it it could only be by hearsay.

The Special Master: Sustained.

Q. Did they state to you their views on this subject for repetition to Mr. Hughes?

A. Yes, I'd say they stated their views to me knowing that either I would—

Mr. Hayes: I object. Now the witness is speculating as to what was in their minds when they stated their views.

The Special Master: That's what we are trying to get away from.

The Witness: I see.

Q. Did you tell Mr. Hughes what the views of Mr. Damon and Mr. Collings were on this subject?

A. Yes, I did.

[Tr. 1529] Q. What did you tell Mr. Hughes their views on this subject were?

A. I told Mr. Hughes that Mr. Damon and Mr. Collings were in agreement with my position on the 1449A and on the advisability of moving ahead with the Douglas DC7C.

Q. What was the result of these recommendations to Mr. Hughes†

Mr. Hayes: Which recommendations, Mr. Tenney?

Mr. Tenney: The recommendations that Mr. Rummel has been talking about.

The Special Master: The DC-8C, whatever that is Mr. Tenney: That the DC-7C should be purchased and not the 1449A.

A. Well, Mr. Hughes had-

The Special Master: I wonder if you could rephrase that a little for my benefit if nothing else.

What did Mr. Hughes say when you told him that?

Mr. Tenney: Will you answer that?

The Witness: Oh, Mr. Hughes expressed con-Tr. 15301 fidence in Lockheed in that they would be able to evolve a better airplane than any of us then thought they would be able to do.

Q. What airplane was ordered by Toolco on that occasion?

The Special Master: On what occasion?

Mr. Tenney: On that occasion.

The Special Master: The occasion of his conversation with Mr. Hughes?

Mr. Tenney: In December of 1954.

Mr. Hayes: He has already testified the 1449A.

The Special Master: That is true, is it not?

The Witness: Yes, sir, Mr. Brownell, it is.

Mr. Hayes: If I am not allowed to repeat, Mr. Tenney, you should not either.

Mr. Tenney: As long as it is on the record.

Q. Thereafter, in the year 1955 when consideration was being given to the desirability of ordering jet aircraft for TWA's use as far as you are aware, did Mr. Hughes consult Mr. Damon or keep him informed?

Mr. Hayes: If he knows.

The Special Master: If he knows.

[Tr. 1531] Mr. Hayes: He may not know anything.

A. As far as I am aware, he did not. Because of that I made it a point to fill Mr. Damon in on occasion myself

thinking that he, as president, should be generally informed as to the important activities that were under way with respect to jets.

Mr. Hayes: I move to strike that portion of the answer beginning with the words "because of that," in stating what Mr. Rummel then did.

It is not responsive to the question.

Mr. Tenney: You can strike that and I will ask another question on the same general line.

[Tr. 1532] Q. Did you inform Mr. Damon on this subject?

Mr. Hayes: On what subject now?

Mr. Tenney: The subject of the consideration that was being given to the acquisition of jet aircraft for TWA's use during the year 1955.

Mr. Hayes: The trouble with this question, Mr. Brownell, is that the record already shows a consideration during that year was being given fairly actively to at least three different manufacturers' aircraft, Boeing, Avro and Convair, and some consideration was being given to Douglas.

I think the question should be made a little clearer so we know what we are talking about.

The Special Master: In the first place, do you have anything to add to your prior testimony?

The Witness: I don't believe so. I think this is covered.

The Special Master: May I interrupt for a minute? Are you going to press the objection as to which I reserved a few minutes ago?

Mr. Hayes: Yes.

#### A-715

## Rummel-Redirect

The Special Master: Will it interfere in any way if I wait and read the record on that [Tr. 1533] before I rule?

Mr. Hayes: No.

Mr. Tenney: It won't interfere, Mr. Brownell.

May I just observe on that point that for a number of hearing days Mr. Hayes was examining this witness on the scope of his authority and on his function in TWA during this period and even outside of this period, and I believe that the questions that I asked were squarely directed to that point.

Q. Mr. Rummel, at page 435 of the transcript of the cross examination, Mr. Hayes asked you if you were the Toolco representative in connection with all of the contracts that had been made for the jets with Boeing and Convair.

Your answer reads in part:

"I was the representative on the specific contracts that I mentioned earlier."

In giving that answer, did you have other contracts in mind as to which you were not the representative?

A. Yes, I-

Mr. Hayes: Wait a second.

The Witness: Oh, I'm sorry. I guess I should [Tr. 1534] look to you.

The Special Master: Yes, that will save time.

Mr. Hayes: No objection.

A. Yes, I did.

Q. What other contracts did you have in mind?

A. Well, I had in mind the contracts entered into in the latter part of that period between Tool Company and Convair for 880Ms and for 990s.

I had no jurisdiction over those, and, in fact had been specifically instructed not to participate in any way or to have any surveillance and instruct my people along the same line.

The Special Master: I don't understand that. You mean you did not act in any way as a representative of TWA but only of Toolco with respect to those two contracts?

The Witness: No, sir.

I meant that, but—well, let me clarify it.

The Special Master: Yes.

The Witness: The specific instructions from Mr. Hughes was that I was to have nothing to do with those contracts, and I was to instruct the [Tr. 1535] people working for me that they were to have nothing to do with those contracts, either as a Hughes representative or as a TWA representative or in any capacity. I was not to participate.

Mr. Tenney: Perhaps I could clarify this a little bit. Mr. Brownell.

The Special Master: Off the record.

(Discussion off the record.)

The Witness: The two contracts, Mr. Brownell, or the three contracts that I was representative to on the airframe side of it was the contract that Hughes Tool had with Convair for the development of the thirty out of forty 880s.

Then finally the contract with Boeing for fifteen 131s, and the contract with Boeing for eighteen 331s.

Now, these two contracts—the contracts for the two groups of planes I just mentioned were entered into in the latter period between Hughes Tool and Convair for a certain number of 880M type airplanes

and 990 type airplanes and 990 was also at one time called the CV600. And it was those two contracts over which I had no surveillance of any kind and was instructed to keep hands off [Tr. 1536] completely.

That is what I had in mind in answering this question. I specifically referred to the early specific contracts over which I did have surveillance. I failed at this time to bring this aspect out.

Mr. Hayes: I might mention that this is not redirect at all because the witness' testimony as given at page 435 is crystal clear that he was referring to the eighteen 331s, the fifteen 131s and the thirty Convairs and this actually is new direct rather than redirect.

But go ahead.

# By Mr. Tenney:

Q. My next question is to further clarify that point. Were these aircraft built to TWA's specifications?

Mr. Hayes: This is new direct. It has nothing to do with anything that is in his statement or with anything about which I cross examined this witness.

The Special Master: How do you react to that comment?

Mr. Tenney: I think that it is relevant [Tr. 1537] to the question that he asked here and it clarifies just what was the scope of Mr. Rummel's authority and what these contracts were that he was going into.

Mr. Hayes: His answer was crystal clear, I thought.

The Special Master: Off the record. (Discussion off the record).

By Mr. Tenney:

Q. Did you or to your knowledge anyone else employed by TWA ever recommend to Mr. Hughes or the Hughes Tool Company the acquisition of Convair 990 aircraft for use by TWA?

Mr. Hayes: I object as immaterial and irrelevant.
The Special Master: Overruled.

- A. I did not, and I don't recall knowing anyone else that did.
- Q. At page 440 of your testimony, Mr. Rummel, Mr. Hayes asked you, and I am summarizing two questions, whether your duties would have been the same if TWA had placed the contracts rather than Toolco.

Your answer to that question reads:

"That is correct, yes."

ITr. 1538 I ask you whether that answer is complete.

A. No, I guess it isn't entirely complete.

My duties were—my duties as a Hughes Tool special representative were limited in that I had no authority on delivery matters and no authority to disburse funds.

I think that had I been serving only as TWA's representative, I would have had so that greater authority with respect to deliveries.

For example, I don't believe that clearances would have been required of the type that were with respect to proceeding with deliveries. I don't think that Hughes Tool representatives could have limited our inspection activities at the factory or cause airplanes to have been set aside.

It is primarily this phrase that I would add to the statement.

The Special Master: Did you place any orders for planes solely as a representative of TWA?

The Witness: No. sir.

Well, you-

# Q. Have you since 1960?

Mr. Hayes: Wait a second, Mr. Tenney.

[Tr. 1539] The Witness: I take it you are talking about jets, is that correct?

The Special Master: No, at any time during your employment. I am going to follow up by asking you if you did whether you made the sole decision as to the delivery dates.

The Witness: No, what happened here was that the—Hughes was so closely involved in all of the programs that the question of whether TWA or Hughes signed the orders—particularly in the piston area—was viewed as of no great significance.

In some cases with the pistons we had no problems of this type. In the 1649A we were deeply concerned over this, this particular aspect. It varied with the circumstances.

But in either case we all understood how this worked and tried to recognize it.

Mr. Hayes: Mr. Brownell, I didn't want to interrupt. You asked a question. I was about to make a motion at that point which was directed to the answer which immediately preceded your question in which the witness went on and said that he thought, he said think that if I had been representing TWA this and this and this and that [Tr. 1540] would have resulted.

This I submit is speculation by the witness and I move to strike that portion of the answer beginning

when he first used the words "I think," everything after that.

Mr. Tenney: Mr. Brownell, I would like to say on that that in this precise part of the cross examination what Mr. Hayes was asking for was Mr. Rummel's opinion as to whether his duties and responsibilities would have been different if the contract had been placed directly by TWA rather than by Hughes, and it is Mr. Hayes' question calling for an opinion here that I am directing this to and I am simply trying to clarify just what the witness' opinion was.

Mr. Hayes: At no point in my whole cross examination that I can recall have I ever asked Mr. Rummel to express an opinion.

I was asking for a fact here. He had been factory representative and I wanted to know what the duties of factory representatives were, and if it made any difference in the duties of a factory representative whether TWA placed the order or Toolco placed the order. That is a matter of fact, not ITr. 1541 opinion. I never asked for opinion.

The Special Master: I was a little troubled by the answer and that's why I asked the question in a attempt to clarify whether your answer was based on experience or speculation as to what would have happened.

As I understand your answer, it is speculation as to what would have happened.

As long as that is clarified in the record I think we will let the record stand as it is.

By Mr. Tenney:

Q. At page 1120-

Mr. Hayes: Will you wait a second, Mr. Tenney, until I get the volume?

Mr. Tenney: Surely.

Q.—in answer to a question of the Special Master you described certain instances in which aircraft were tendered to Toolco by Convair, but delivery was not effected for various reasons.

Did this have any effect on Convair production of other aircraft, that is, aircraft other than the specific ones so tendered?

Mr. Hayes: I object to this, if your Honor please. This is asking for a conclusion by [Tr. 1542] this witness as to Convair's operations.

Mr. Tenney: I think, Mr. Special Master, that the witness has testified that he was quite familiar with Convair's operations since it was one of his functions as factory representative under this contract.

Mr. Hayes: It was not one of his functions to run the Convair Company. That was certainly not one of his functions. He may be an expert on many things, but he is not an expert on the operation of Convair aircraft.

The Special Master: Why don't you ask whether this was within the scope of his duties?

Q. Mr. Rummel, was it within the scope of your duties as factory representative for Toolco on the contract between Toolco and Convair for the production by Convair and sale to Toolco of thirty Convair 880 jet aircraft to be

familiar with the state of the production by Convair pursuant to that contract?

A. It was my duty as the Hughes Tool Company representative to be kept advised by our factory representative and as directly as I otherwise could be in this respect.

Q. Were you so advised?

ITr. 1543 Mr. Hayes: I object. Now we are getting into hearsay again. We find now he is giving testimony as to what somebody advised him.

The Special Master: Will you rephrase that!

Q. Do you have knowledge, firsthand knowledge, in the scope of your authority as Toolco representative of the Convair production line at that time in connection with the production by Convair of thirty jet aircraft for Toolco!

Mr. Hayes: May I have the question repeated! It is a long one and I did not quite get it all.

The Special Master: Surely. Mr. Reporter.

(The question was read.)

Mr. Hayes: At what time do you have in mind, Mr. Tenney?

Mr. Tenney: At the time when aircraft were tendered to Toolco by Convair, but delivery was not effected as Mr. Rummel testified at the portion of the transcript to which I have referred him.

A. Yes.

Q. Now I will ask the question I was trying to ask. [Tr. 1544] Did this have any effect on Convair production of other aircraft pursuant to that contract, that is, other aircraft than those that were so tendered but not delivered?

Mr. Hayes: I object to this, if your Honor please. This goes into the operations by Convair in the production of aircraft.

He may have been very familiar with what happened up to that time. Is he being presented here as a witness on what Convair's problems were at that time?

The Special Master: I think I will allow the witness to answer.

A. Well, after airplanes had been put forward for delivery to Toolco and acceptance operations and delivery had been refused, Convair's production line started coming to a halt.

Convair withdrew workmen at various stages until it had reason to believe that the airplanes that they were investing in would, in fact, be delivered.

Mr. Hayes: I move to strike the answer, Mr. Brownell. The witness now is giving us supposed knowledge as to Convair ceasing operations.

This must have been Convair's decision. ITr. 15451 The contract with Convair which is part of this witness' prepared testimony; one of the exhibits or annexes, I don't know which it is called—I think it is an exhibit—provides specifically that if delivery were not taken by Toolco they could just store the planes and charge Toolco for it.

Now, if Convair decided to cease production that was Convair's decision.

So I move to strike the answer.

The Special Master: Overruled.

By Mr. Tenney:

Q. At page 608 of the transcript, Mr. Rummel, Mr. Hayes asks the question:

"Q. Do you know of any plane in the development of which Mr. Hughes participated and which at the time of such participation was intended to be used by an airline other than TWA?

Your answer does not come until page 609, but it reads:

"A. No, I do not think I can think of any instance that I can certainly state as a fact if that is what he had in mind."

Mr. Rummel, in that answer, did you include aircraft which were intended to be used both by TWA and by other air lines?

A. No. I had in mind aircraft destined specifically for airlines other than TWA.

Q. Looking back at Mr. Hayes' question-

Mr. Hayes: Wait a second. Let me get this quetion and answer. It's not clear to me what the aswer is, in light of the question.

Could I have that question and answer repeated, please?

(The record was read.)

(Tr. 1547) Mr. Hayes: All right.

# By Mr. Tenney:

Q. Turning back to Mr. Hayes' question on page 608, if you include in that question aircraft which intended to be used both by TWA and other airlines, what would be your answer to that question so construed?

Mr. Hayes: Are you asking a different question or are you trying to construe my question, Mr. Tenney! If you are asking a different question, say so. That was not the construction of my question.

Mr. Tenney: I think the question covers that. The answer was not intended to cover that and I am simply trying to clarify it on a matter of redirect the answer to a precise question that you asked.

Mr. Hayes: I think it is strictly objectionable, but

I won't object.

The Special Master: Off the record.

(Discussion off the record.)

Mr. Tenney: Let me rephrase the question now that we know what we are trying to do.

Mr. Hayes: Do we?

# By Mr. Tenney:

Q. Looking at Mr. Hayes' question on page 608, which Tr. 15481 perhaps can be construed as including—and I so construed it as including aircraft intended to be used both by TWA and by other airlines, what would your answer be f

A. Well, the development of the Constellation in which Mr. Hughes participated was certainly intended to be used

by airlines other than TWA all along.

When we were working on the Convair series, that led to the 880, each of those was intended to be sold and used by airlines in addition to TWA.

The Avro that I mentioned, Supersonic Avro was another nch case.

The Florida project that I mentioned involved, to my best nderstanding, planes not only for TWA, but for other urlines as well, and I believe in addition the Government. I might add that I don't know of any manufacturer that odd have undertaken a major plane development program or any one airline or, really, any one airline that could ford to pay for such a thing.

The Special Master: Are you saying that in these instances you cite the same specific plane was used by more than one company or are you saying the same type of plane?

The Witness: No, I wasn't-perhaps I can IT.

1549] clarify that, Mr. Brownell.

I am saying the same basic plane. The planes were somewhat different in detail in each historical case between airlines, but they basically—the same series would be made in the same tooling and the basic airframe would be for the larger part identical, and so on.

The Special Master: In other words, more than one airline ordered that basic plane and brought

that basic plane?

The Witness: Well, in cases where actual planes were built, yes, in cases that I mentioned where their own plan was envisioned that they would be built for airlines other than just TWA alone.

# By Mr. Tenney:

Q. In your prepared statement on your direct testimony, Mr. Rummel, in Annex D, Mr. Hayes asked you questions and you testified as to the general information that you had available in preparing the reallocation contained in that annex.

Would you state the mechanical process which you followed in using this information?

A. Yes.

The Special Master: You may proceed.
[Tr. 1550] The Witness: Thank you. I was not sure.

A. (continuing) What we did was group the actual deliveries to various airlines in chronological order with respect to Boeing. This included all of the deliveries of jets during this period.

We then checked those lists and rechecked them for accuracy, and we also checked them with The Boeing Com-

pany, who agreed they were right.

Well, then we pulled out or ignored, you might say, deliveries that had been made to airlines other than Pan American, American and TWA.

The Special Master: Or Hughes Tool, you mean?
The Witness: Yes, I should have said Hughes
Tool.

A. (continuing) Now, actually, I think this was probably somewhat conservative with respect to the reallocation, because—

Mr. Hayes: I object to any comment by the witness as to what was or was not conservative, Mr. Brownell.

I am perfectly willing to have him explain this mechanical process, without comments.

The Special Master: You can give the reasons [Tr. 1551] as to why you adopted this mechanical process.

The Witness: Well, we did this because we felt that in doing it this way, it could be easily shown that the reallocation would have produced deliveries somewhat less favorable than if we had assumed that deliveries to airplanes other than—airlines other than the three I mentioned were also changed.

And the reason for this is that some of the airlines ordered after Pan American and American, but before Hughes Tool, in fact, did.

So when you go back and assume that Hughes Tool, American and Pan American would have ordered at the same time, I believe that some of these deliveries that were then open would have been picked up. But we did not so assume in this reallocation.

We then set out the Boeing policies and practices as we—as I recalled them, and set out to reallocate the deliveries on the general assumption that all three airlines had ordered—that is two airlines and Hughes Tool had ordered about the same time. And after this, we checked with Boeing the—our recollection on practices and policies as well as the reallocations, and the final product was [Tr. 1552] one which we all had agreed was a reasonable one.

I believe that very quickly would summarize the mechanical process.

Mr. Hayes: I assume when Mr. Rummel says "we all agree," he is not including the defendants.

The Special Master: The Court will take judicial notice of that.

# By Mr. Tenney:

Q. At page 15 of your direct testimony, that is the statement, will you please look, Mr. Rummel, at the first sentence under the table?

A. I have.

Q. Who did Convair inform at Toolco of these facts!

Mr. Hayes: I think this has all been covered very substantially in cross-examination so far.

Mr. Tenney: Mr. Brownell, the reason— The Special Master: I will allow it.

and amorphical bas and American but

- A. Convair informed me, as the Hughes Tool Company representative, and quite possibly could have informed others.
- Q. Did you communicate this information to other Toolco personnel?

A. Yes.

[Tr. 1553] Q. Who?

A. Well, I advised Mr. Cook and I left word through Mr. Hughes, 7000 Romaine Street office, as I recall, and made an effort to contact Mr. Hughes. I think it was—I think it was probably some time before I actually got Hughes.

Q. This statement in that sentence is then based on your own personal knowledge, Mr. Rummel?

A. Yes.

#### Rummel-Recross

- [Tr. 1840] I now ask you if you can identify any meetings at which you were present between Mr. Damon and any representatives of Boeing.

The Special Master: On this question?
Mr. Hayes: On this question of deliveries.

A. The San Francisco meeting I mentioned earlier was one such meeting having to do with expected jet deliveries which would have provided Damon with background information.

Damon was knowledgeable, as most people in his position were, in this general area through more or less routine contacts with people, but at the San Francisco meeting as I indicated earlier, I was present and so was Damon.

Q. When did that meeting take place?

A. Well, I had difficulty before, Mr. Hayes, in recalling the precise date and I still do.

I think it was during 1954.

Q. 19541

A. I am not sure. It could have been earlier.

Q. Let us come down to 1955. Were you present at any meetings discussing delivery dates between Mr. Damon and representatives of Boeing?

A. I don't recall any in 1955.

[Tr. 1841] Q. Do you recall any meetings in 1955 at which you were present and which Mr. Damon had with representatives of Lockheed concerning deliveries?

A. No, I don't recall any specifically in 1955 at the moment.

Q. Do you recall any meetings at which you were present between Mr. Damon and representatives of Douglas at which deliveries, jet deliveries, were discussed?

A. No.

## Rummel-Recross

Q. Did I understand you to testify a few minutes ago— I want to be sure that I understood you correctly—that there were meetings between manufacturers' representatives and Damon at which you were not present?

A. I was aware during this period that there were a few telephone calls to Mr. Damon from Boeing representatives and from Lockheed, and also that their representatives would touch base so to speak with Damon when they could, when they were in the area.

And I was not a party to these conversations or these contacts

- Q. This is in 1955 you are talking about?
- A. This would have been to some extent in 1955.

Damon's activity on jets seemed to recede in this period rather pronouncedly.

ITr. 1842] Q. Say that again?

- A. His direct activities on jet acquisitions appeared to become less and less.
  - Q. During what period?
  - A. 1955.
- Q. You mean ceased to be interested, is that what you are saying?
  - A. No, I didn't say that.
- Q. What do you mean by seemed to recede? I don't know what you mean by that, Mr. Rummel. Please explain
- A. Well, I only meant that I was working directly and more and more with Hughes and less and less with TWA in that period. That was in earlier testimony, I'm quite sure.
- Q. But do you know of your own knowledge what Mr. Damon may have been doing with the manufacturers?
- A. Well, certainly not totally. I'm giving you my best recollection that I do have on the point.

## Rummel—Recross

Q. Are you saying in substance that Mr. Damon was not actively communicating with manufacturers with respect to the possibility of acquiring jets for TWA?

Mr. Sonnett: In 1955?

Mr. Hayes: In 1955 I am talking about.

[Tr. 1843] A. Well, I didn't say it that way.

He was aware of Hughes' interest, and Damon seemed to be moving more towards the back burner, so to speak, in this area.

Q. Would you please explain that to me?

A. Well, I'm sorry.

This was the period as I testified earlier, when I was involved in the development of some airplanes at Convair and Avro and other things.

I tried to keep Damon generally informed, and he was knowledgeable of my working with Hughes frequently under very deep secrecy.

And there were many direct contacts with the manufacturers by both myself and Hughes, and I think it was only natural of Mr. Damon to not—well, to move way from—to some degree, from the direct participation that one might expect of a man in that position. And this occurred.

That's what I'm trying to say.

# [Tr. 1863] • • • By Mr. Hayes:

Q. At the end, the last paragraph, page 9 of Defendants' Exhibit 44 in evidence I notice Mr. Damon's recommendation.

Did Mr. Damon have any discussion with you as to the recommendation he intended to make to the board of directors?

A. I don't think he did.

Q. Did you know that he intended to make a recommendation to the board of directors?

A. I don't recall—I don't know that I did at this meeting. I had been urging action on jet procurement for some time to all those in authority who would listen to me including Damon.

ITr. 1864] Q. Yes, you told us that several times, Mr. Rummel. Please don't repeat.

A. Well, I'm sorry, Mr. Hayes, if I repeated unnecessarily.

Q. Did you know of the action taken by the board of directors after Mr. Damon made his report?

A. I did hear of it subsequently, yes.

Q. How long after?

A. Oh, I'm not really sure, but I imagine fairly shortly after.

Q. Were you ever given an explanation by anybody as to why Mr. Damon did not recommend particular equipment to be acquired by TWA?

A. There was discussion on that point.

Q. Did you hear the question, Mr. Rummel? Please answer it.

The Witness: Will you read it, please? (The question was read.)

Mr. Sonnett: I think the witness had started an answer. He was interrupted or paused. Maybe he can continue.

A. Well, what I was going to say is there were discussions on this following the meeting, and the conclusion that I arrived at was that Damon didn't feel free [Tr. 1865] to because of the Hughes handling of this; that this was simply move, a pressure move to get the board to authorize

Damon to do something, and I had the impression that it was substantially ineffective.

- Q. You said there were discussions. Discussions among whom?
- A. Well, I can't be completely sure, but I'm quite certain that Ray Cook was one of them.

As I recall it, just what happened came to me through that channel rather than directly through TWA, but I can't be entirely sure.

- Q. Are these discussions at which you were present?
- A. These are discussions between people including me.
- Q. Who else was present besides Mr. Cook or was it just Mr. Cook and yourself who were present?
- A. That's the name that comes to mind. I don't recall who else may have been present. Possibly Mr. Rourke, but I'm not sure of that.
  - Q. Any of the directors other than Mr. Cook?
- A. Oh, no, this wasn't during the directors meetings. I didn't participate in those. This was following.
  - Q. How long after?
- A. I'm not sure of that either. I believe it was ITr. 1866] shortly thereafter. I believe it was a matter of weeks but I can't be that specific.
  - Q. A matter of weeks anyhow?
  - A. Yes.
- Q. You say you drew a conclusion as to why Mr. Damon didn't mention specific aircraft. On what did you base your conclusion?
- A. General knowledge that he was frustrated in his efforts to get the company to move on jets, and the fact that he would ask the board for the authority to come forward with an equipment recommendation. This in itself seemed very strange because I had the impression that the president normally had such authority in any event.

This asks for authority to present to the board.

- Q. What about this frustration, will you tell us about that?
  - A. As I said-
- Q. The source of your knowledge is what I would like to get.
- A. Primarily the impression that Mr. Damon gave me, as I-
- Q. I am not interested in your impressions, Mr. Rummel. I am interested in what Mr. Damon may have told you.

ITr. 1867] A. Well, I was trying to explain not only the words, but the demeanor, the general outlook during this period of time, meaning during the course of 1955 led me to believe that he was discouraged in equipment and dissatisfied with his own ability to get things done.

I had the impression then that he was being frustrated by the Hughes direct handling. I was working directly with Hughes and had gone out of my way to keep Ralph advised.

I did not have the impression that Hughes was keeping him advised.

It is observing this as well as what he said which leads me to this conclusion.

Now, during the Washington meeting I am quite certain I did mention earlier, he plainly indicated he was powerless to do anything to kick the program ahead.

- Q. Have you finished?
- A. Well, I-
- Q. Let me know when you have finished. That is all.
- A. Yes, I think I am finished.

Mr. Hayes: Mr. Brownell, I asked for what Mr. Damon said specifically. I don't want impressions.

[Tr. 1868] I move to strike the answer because it does not give us a word as to what Mr. Damon ever said.

Mr. Sonnett: I oppose the motion. The question was a broad question. Do you know why—

Mr. Hayes: The question was what he said.

Mr. Sonnett: What led off on this line was do you know why Mr. Damon did not recommend specific equipment.

Mr. Hayes: I did not ask such a question ever.

Mr. Sonnett: From that beginning, counsel, you continued on with the line, and you asked him to give you what he gave you and his answer is fairly responsive. I know you do not like it but it happens to be responsive and it is true.

Mr. Hayes: I am not going to get myself involved in any controversy now with Mr. Sonnett.

The Special Master: I will read it over first thing in the morning and be prepared to rule. We will reconvene tomorrow morning at 10:30.

Mr. Hayes: I do want to make the point I never asked the witness why. What I asked him was did he give an explanation and finally it got [Tr. 1869] down to Mr. Damon and I specifically directed him to tell what Mr. Damon said and not what his impressions were.

May we suspend now?
The Special Master: Yes.

[Tr. 1875] • • • ROBERT W. RUMMEL, resumed the stand and testified further as follows:

The Special Master: On the record.

I examined the transcript of yesterday's hearings and decided to allow the answer of Mr. Rummel to stand as being responsive to the line of questioning, with, of course, complete liberty to Mr. Hayes to follow up with specific questions.

Mr. Hayes: While waiting for this exhibit [Tr. 1876] I will ask Mr. Rummel another question.

# Examination (cont'd) by Mr. Hayes:

Q. Aside from impressions you may have formed, Mr. Rummel, what did Mr. Damon say to you with respect to his failure to make specific equipment recommendations?

Mr. Williams: You mean at any time during this period?

Mr. Hayes: It has to be with respect to very shortly prior to December 6th up to the date of his death in early 1956.

A. Well, it is pretty hard to be completely certain of precise words after all this time.

Mr. Williams: He is not asking for precise words. Whatever you remember.

The Witness: Well, he indicated a desire to move forward with the jet program and frustration, as I indicated in my earlier reply, in not being able to do so.

And during this meeting, he indicated great concern over his inability to be in a position, which he seemed to recognize, of not being in a position to be decisive and to move forward.

The Special Master: Could I ask a question, Mr. Hayes?

[Tr. 1877] Mr. Hayes: Surely.

The Special Master: Did he tell you why he did not present your equipment recommendations to the board?

The Witness: I don't recall that he did, Mr. Brownell, in specific terms, at least.

ITr. 18901 • • • Q. Do you know whether or not Mr. Leslie may have been in touch with aircraft manufacturers in connection with the amount of down-payments and progress payments that would be required?

A. I don't know.

Q. Were you aware in December 1955 that TWA's cash position at that time did not enable it to make the downpayments required on jets?

A. I don't know.

Q. You don't know whether you were aware of that or not?

A. No.

Mr. Hayes: I offer in evidence Defendants' Exhibit 45, Mr. Brownell.

Mr. Williams: No objection.

The Special Master: So ordered.

(Defendants' Exhibit 45 for identification marked in evidence as of this date.)

## By Mr. Hayes:

Q. You have given us some testimony up to now, Mr. Rummel, about the negotiations that were carried on between you, sitting in on all of them, and the Convair people

with respect to Models 18, 19 and 20. I do not [Tr. 1891] think this question has been asked.

In those negotiations, what particular number of Models 18, 19 or 20 was under discussion, if any?

Mr. Williams: Mr. Hayes, may I understand it? Is it the number of planes for TWA you are talking about?

Mr. Hayes: That is right.

A. Well, a good many numbers were under discussion. As I recall it, the initial draft contract included 30 Model 18s, but I don't think at that time the—well, maybe that answers the question.

Q. Do you recall what the purchase price was in that proposed contract for the 30 planes?

A. No, I don't exactly.

Q. See if I can refresh your recollection.

Does the amount of \$150 million appear to you to be the amount?

- A. It would be on that order of magnitude. I don't remember exactly, Mr. Hayes.
- Q. When Convair terminated the—Convair did terminate that negotiations for that particular number of Model 18s, did it not?
- A. Well, the negotiation for Model 18 was terminated. I don't think there was a contract for them. There may have [Tr. 1892] been some sort of an agreement, and I am a little vague at the moment, that related to bailing out up to a certain point, but I may be confusing this with the 880 now.
- Q. I think you are, as a matter of fact.
- A. Well, this may be so. But I am a little vague on the inclusion of a specific dollar amount, at least in the early contracts. I am not sure that occurred.

Q. Didn't the negotiations get to the point where there was at least a draft of contract with the Company's specifications?

A. On the Model 18, the contract was well developed by the time the project was abandoned.

Q. How did it come about to be abandoned? What is your recollection there?

A. Well-

Q. Let me see if I can help you, Mr. Rummel. Did Convair have at that time military commitments as to which it was concerned as to its ability to perform in the event it entered into a contract with the Hughes Tool Company for planes for TWA?

A. I don't recall that concern being expressed in those terms.

There was a discussion for a while concerning whether the airplane would be built in Fort Worth or [Tr. 1892A] San Diego, which did relate to military commitments.

Q. Did Convair expect to be able to determine its military commitments by February 1st of 1956?

(Tr. 1893) Mr. Williams: If you know. Your question obviously is objectionable in asking—

Mr. Hayes: So far as the witness knows, of course.

Mr. Williams: As far as what Convair expected. He does not know except from what he was told.

Mr. Hayes: Except from what he was told, exactly. He was in these negotiations.

Mr. Williams: If he knows.

The Witness: Could that question be read? I somehow didn't capture it.

Mr. Hayes: I will restate it. It's easier.

Q. During the negotiations with respect to possible contract with Convair, did they at any time indicate that they had certain difficulties with respect to military aircraft on which they expected a decision by February 1, 1956, at which time they would resume negotiations concerning Convair aircraft with Hughes Tool and TWA.

Mr. Williams: Do you understand the question?

It is a very long one.

Mr. Hayes: It is long.

(Tr. 1894) Mr. Williams: If you understand it, go ahead and answer it.

The Witness: I think I understand it, but I don't recall that.

Q. You do not recall any association of military or possible military commitments on the part of Convair with their proceeding with the commercial plane.

Mr. Williams: I don't understand that question. I object to it.

Mr. Hayes: Maybe the witness does.

Mr. Williams: Association?

Mr. Hayes: Yes.

Mr. Williams: I don't understand that.

The Special Master: Maybe I could rephrase that, unless you want to, Mr. Hayes.

Mr. Hayes: Go right ahead, Mr. Brownell. I would rather you do my work.

The Special Master: Did they ever indicate to you that the progress of their negotiations with you was dependent in any way on the outcome of the negotiations with the government on military planes?

The Witness: I don't recall it in that context. They were going all out to get both [Tr. 1895] military orders and our orders.

The significant aspect that I remember was the emergence of the improved Boeings and Convairs which meant that there would have been three manufacturers building essentially the same kind of airplane in competition. I think that was the underlying reason that caused Convair and ourselves to abandon the Model 18 project.

## By Mr. Hayes:

- Q. It may have been a slip of the tongue in your answer.
- A. Maybe.
- Q. You said the emergence of the improved Convairs and Boeings?
  - A. I'm sorry.
  - Q. You meant Douglas and Boeings, did you not?
- A. I beg your pardon. I meant Douglas and Boeings, yes. I will try to be careful.

The Special Master: You are doing some of his work.

Mr. Hayes: You took over some of mine.

The Special Master: We are square all around now.

## [Tr. 1909] • • • By Mr. Hayes:

Q. Some time in your cross-examination, Mr. Rummel, you have mentioned that the negotiations with Boeing reached the point where there was an order for eight Boeings made or given as a stop-gap measure at the time the order was entered.

The Special Master: Jets!
Mr. Hayes: Jets, yes. Boeing jets.

Q. Had there been any letter of intent entered into with Boeing by either TWA or the Tool Company before the date of the formal contract?

A. I'm not entirely sure.

Q. Let me ask you this question: Had there been any kind of commitment, informal or otherwise, between Boeing and either TWA or the Tool Company before the end of 1955 with respect to the purchase of eight Boeings?

A. With respect to the eight Boeings that were finally

ordered, I am not entirely sure.

(Tr. 1910) There were offers from Boeing and meetings, and whether there were letters of memorandum written which may have had a contractual effect, I'm a little vague on it at the moment.

The Special Master: There couldn't have been if the directors next month were still discussing about whether orders should be entered.

Mr. Hayes: Directors for next month?

The Special Master: In January. Did you say December 1955?

Mr. Hayes: That's right. I said, was there any kind of commitment informal or otherwise.

The Special Master: Wouldn't that have been reflected in directors minutes that you introduced here in January 1956?

Mr. Hayes: No, they were December minutes.

The Special Master: Oh, they were December minutes?

Mr. Hayes: Yes, they were December minutes.

The Witness: We attempted during this period to get Boeing to commit and hold favorable delivery positions, and I'm sure we would have taken the

position that our conversations were tantamount to their commitment to do so.

(Tr. 1910A) But what I was referring to and I thought you were, was a contract or a preliminary contract form.

[Tr. 1911] Q. That was my first question, yes.

A. Yes. And this I'm not sure. I don't at the moment recall one having been signed in December, although I wouldn't want to swear that it hadn't been.

Q. You said, "We were negotiating."

Whom do you include in "we" at this point in your answer?

A. Mr. Hughes, myself and Harry West.

The Special Master: Would you read back to me that last answer of the witness about reservation of positions?

(The record was read.)

Q. Can you fix the date of these preliminary conversations which you said you would consider to be commitments?

A. Well, I said we would have, I think, construed them in continuing negotiations with Boeing as commitments. Whether we would have prevailed, I don't know.

6

d

0

bo

These conversations occurred following, as I recall it now, the demise, if you like, of the Model 18, and during the period that we were working on Models 19 and 20, I believe.

I think I testified earlier Boeing had had people in San Diego talking to West and I there. There [Tr. 1912] had been other meetings. And it was during this latter quarter, more or less—I just can't be precise—of the year that our attention became centered on Boeing.

Q. Is it your best recollection as you sit here that the time of these discussions which you would later contend were commitments was in the fall of 1955?

A. Well, those are the ones that I'm referring to. They are not certainly to the exclusion of earlier discussions with Boeing on jets that I have referred to earlier.

Q. You have given some testimony with respect to the Avro negotiations which, if I recall correctly, you said continued into some time in 1956?

A. Yes. This is Avro Canada.

Q. That is right.

Was there an occasion when after one of the discussions with Convair terminated—and I cannot identify which plane—my guess would be 18, but do not take my word for it—that Avro representatives were presented with the design and specifications of the plane that had been contemplated with Convair?

A. Gee, I don't remember that.

Q. You have no recollection of that at all?

A. I remember we had numerous—well, we had—ITr. 1913 not maybe numerous, but we had a number of discussions with Avro on advanced transports some of which had certain characteristics in common with Convair. That was because both reflected to some degree our thinking, but I do not recall at any point having handed, for example, another company, Convair data.

Tr. 1921] By Mr. Hayes:

Q. Were you ever advised whether the Tool Company coard decided not to require immediate reimbursement run TWA of a sum of approximately \$17 million that had been made to Lockheed for 1649s?

A. I don't specifically recall it, Mr. Hayes, but I might have been knowledgeable.

Q. Do you know whether TWA in late 1955 had the funds necessary to make the down payments that would be required on jet contracts?

Mr. Sonnett: Objection as beyond the scope of the witness' direct, wholly outside his field of testimony and of competence.

Mr. Hayes: It is very much within it. He has testified as an expert what TWA should do. That is his language. This is entirely proper cross examination.

Mr. Sonnett: If you point out the testimony to me. I don't recall any testimony by him to that effect.

The Special Master: What was the question, do you know?

Mr. Hayes: Do you know?

The Special Master: I will allow the ITr. 1922 question.

A. I think the question is did I know then what the situation—

Q. Did you know it then or have you learned it since! I will cover your whole scope of knowledge from then to now.

The Witness: May I have the question read?
The Special Master: Yes.
(The question was read.)

A. No. I don't.

Q. And you did not know it in 1955 either?

A. I would have—the answer would be no, but I would be surprised if they had the cash at hand.

Q. There is one date I would like to get more clearly established than it is because on review of the transcript I find a certain amount of confusion.

That is the date when the Model 880 was developed and offered to TWA or any airline.

I can tell you that the confusion arises from—I don't have the reference here I see, but there is one place in your testimony, if I remember rightly, where you suggested or said that it was developed in December of 1955.

(Tr. 1923) But later in another point in your testimony we discussed the Pratt & Whitney orders and the numbers that were ordered, the number of engines and you stated that one of the reasons was the possibility of using those engines in other airplanes, mentioning the Avro and one of the Convair planes, 18, 19 or 20.

First, did the 880 come into being before the negotiations ended for the 18, 19 or 20?

The Special Master: Come into being in the sense that it was being offered?

Mr. Hayes: Being offered, yes.

Q. Or was it after the demise of the 18, 19 and 20?

A. Well, I don't know exactly when it came into being in terms of the development within Convair.

The—my present recollection is that it was during December some time, and I certainly have to qualify this a little bit because I can't pick a day. I think it is about that time. It may have been late November or it may have been—but I think it was during December. I'm just not sure.

At that time Hughes called me at home and discussed the 880 possibility and asked that I get busy and picking up where we left off with Convair and undertaking—ITr. 1924] asked that I undertake technical evaluations for air-

planes of that type simultaneously with the other work that was then going on.

Now, that would have placed it after the Model 18. I'm not clear at the moment as to how long we continued with the Models 19 and 20. It may have been after the Model 19.

On the other hand this could have gone on a little bit

beyond.

For Convair to have put forward the proposal at that time to Hughes would have required that they had done work conceptually and in an effort to define the airplane prior to that time.

So there probably had to be an overlapping in terms of

their effort.

Q. Is it your present recollection that the 880, even though it was only a concept or a dream, was put forward by Convair while negotiations or discussions were still going on at Convair with respect to either the 18, 19 or 20?

- A. I don't believe that our negotiations on the 880 overlapped the negotiations on the Model 18, and I—what I am saying is I am not at the moment sure that the Models 19 and 20 were wholly dead, but I believe that [Tr. 1925] the Model 20 had been abandoned by the time we undertook serious negotiations on the Model 18 as far as being an official Convair—
  - Q. Model 8801
  - A. Model 880.

Q. You previously placed the negotiations on the 18, 19 and 20, and I am not trying to distinguish among them, as running into some time in 1956, and after the time of the placing of the Pratt & Whitney orders which was in February of 1956.

Does that help clear your recollection in any sense as to

the first time the 880 was proposed?

A. No, it doesn't. I still have the impression it was during December.

Q. Do you have any recollection as to the lapse of time between your first hearing of the 880 and the making of the contract?

A. Well, the preliminary agreement was signed in the spring of 1956.

Q. My question was do you have any recollection as to the amount of time that elapsed between the time you first heard of the 880 and when the preliminary agreement was signed?

ITr. 1926] A. It was a number of months.

Q. You don't recall how many?

A. I thought I just indicated my best recollection.

Q. Can you give us your best recollection as to the number of months?

A. Well, I can't be sure. The thing that pops into my mind is that the preliminary agreement was March, but Pm not completely sure. It might have been a little later.

Q. The preliminary agreement according to your statement was in June.

A. Well, all right, then I stand corrected. As I said, I wasn't quite that sure.

Mr. Sonnett: What is your reference to the portion of the witness' statement which says that the preliminary agreement was in June, counsel?

Mr. Hayes: Page 9, No. 3.

Mr. Sonnett: Where do you find the word "preliminary" in that statement?

Mr. Hayes: I don't find it in this statement.

Mr. Sonnett: You so characterized it.

[Tr. 1927] Mr. Hayes: That was the preliminary agreement.

Mr. Sonnett: I don't find the words "preliminary agreement" in there.

Mr. Hayes: I know. It is not there. Ask the witness.

Mr. Sonnett: You ask him, but you incorrectly described the witness' statement.

Mr. Hayes: This obstructionism business.

Mr. Sonnett: I am just calling your attention to it.

Q. I direct your attention to page 9 of your statement. When you used the words "preliminary agreement"—

Mr. Sonnett: Where! What line! The Special Master: 5.

Q. When you used the words there beginning in Paragraph No. 3, "Purchase of Convair," et cetera, did you have the same agreement in mind that you now testify to as the preliminary agreement?

A. Yes.

Q. I ask you what is your best recollection as to the number of months that elapsed prior to June 7, 1956, ITr. 1928 when you first heard of the 880?

A. Well, this would obviously make it around six

months.

Q. Assuming that your guess as to December is correct?

A. Well, I think it was December, but I can't pinpoint it exactly, Mr. Hayes.

Q. You can't be absolutely sure, can you?

A. I can't be 100 per cent for sure that many years ago.

Mr. Hayes: May we recess now, Mr. Brownell? The Special Master: Yes.

[Tr. 1929] Q. Mr. Rummel, you testified before lunch that you first heard of the 880 in a telephone call from Mr. Hughes.

Was Convair offering the 880 for contract at that time?

A. Well, Convair was attempting to interest Mr. Hughes in the purchase of that kind of an airplane at that time.

Q. How developed was the airplane at that time?

A. I'd say it was a fairly advanced proposal.

Q. Any tooling done?

A. Oh, I havely think so.

Q. Was it still on the drawing boards or not?

A. Oh, yes.

Q. Still on the drawing boards?

A. This was prior to the time, I believe, that it was released for production engineering.

Q. What do the words "released for production en-ITr. 1930) gineering" mean?

A. Well, that usually follows the preliminary design effort which, broadly, generally categorizes those efforts which are engaged in to freeze the design sufficiently to permit detailed engineering and tooling.

Q. The meaning I get out of your answer—and correct me if I am wrong—is that it was still in the design stage at the time you first heard of it. Is that right or wrong?

A. That is right.

Q. When did it get out of the design stage?

A. The design stage, I guess, is a term that could be applied to the total development program of the airplane which, in some particularity, ran right up to delivery of individual units and even beyond that period of time.

Q. When you spoke of the design stage, what did you mean? How did you define the words "design stage"?

A. I said, I believe, preliminary design stage and then tried to define clearly what that usually means.

Q. What does it mean?

A. Well, the term "preliminary design" usually refers to that stage of airplane development during which the configuration of the airplane is established to the point where it is sufficiently final to permit the pre- [Tr. 1931] liminary design to be released for detailed engineering and production tooling.

Design development goes on throughout the production period in varying degrees and indeed extends beyond that period.

Q. The preliminary design stage extends into production, you say?

A. I didn't say that, Mr. Hayes.

Q. Maybe I misunderstood you, then. I am speaking of this preliminary design stage that you are talking about

When did Convair pass the preliminary design stage and enter the detailed engineering and tooling stage on the 880!

- A. Oh, I don't know what the release date on that was.
- Q. Was it still in 1955 or was that in 1956?
- A. No, it would have been in 1956.
- Q. How long after you first heard of the 880 would that be?
- A. I really don't know when it was, but it would have been logically an appreciable period.
- Q. Will you define "appreciable" for me, please, Mr. Rummel†

[Tr. 1932] The Special Master: It would have been before June 7th, would it?

The Witness: No, sir, it would have been after that.

The Special Master: It would be after June 7th, the contract date?

The Witness: Yes, sir, because it was between June 7th and the final contract date that a great deal of technical negotiation occurred toward the determining of what the detail configuration and system concepts of the airplane would be and what it would and would not embody.

But precisely when Convair released it for detail engineering and tooling, those two dates aren't necessarily the same, to clarify the record perhaps, but usually they are around the same time, not always.

If anything, production tooling in the detail sense would follow. Even that goes by stages in most cases.

## By Mr. Hayes:

Q. What was the substance of what was said by Mr. Hughes to you in the telephone call to which you referred?

A. Well, the substance, as I recall it, was that he ITr. 1933 had been in touch with Convair and that Convair had a new, smaller jet design available, that he was interested in an appraisal of that design, and I believe, additionally, that he wanted preliminary work undertaken on the contract; that he wanted interest expressed to Convair in the airplane, to keep Convair's attention centered on TWA and Hughes so that in the event it became a full project, or, let's say, it became an airplane, that Hughes would be in line for the first of them.

In other words, we were to develop and maintain an interest and at the same time work on the contract. However, I don't believe I personally did much work on the contract at that particular time.

Q. When did you begin to do work on the contract?

A. Well, following that call I instructed, I believe, Harry West to commence work on the contract and I, from time to time, kept in touch with Mr. West.

What I was referring to a moment ago was that I don't recall personally negotiating on that phase with Convair in the immediate period following Mr. Hughes' call.

Q. Do you know when Mr. Harry West first began working on the contract with Convair?

A. My impression is it was shortly after this call ITr. 1934] from Hughes, but I can't pin the date down there, either.

Q. You said that Mr. Hughes told you about the design, and he wanted an appraisal of the design.

Does the word "design," as you used it, include specifications for the airplane or does it not?

A. Well, it includes—it would include a review of specifications to the extent that they then existed, which was very brief.

Q. The detailed specifications, such as appear in the contract, would not then have been developed?

A. They hadn't then been negotiated, and then, as I recall it, the description—as I recall it, the descriptive data provided by Convair was very, very brief, practically an outline with respect to specifications.

Q. Tell us more about this data. Did it go beyond just outlining configuration? Did it, for example, specify the motors that were to be used or other details?

Tell us, please, if you will, what the position was at the time you communicated with Convair after your call from Mr. Hughes?

A. Well, I don't recall at the moment whether I called Convair or Convair called me immediately following ITr. 1935] that call, but in any event, I met as soon as prac-

tical with Convair to review the data they had on the airplane.

And this data, as I recall it, consisted of several reports,

three-view drawings-

Q. You say three-view drawings?

A. Three-view drawings.

Q. What does that mean?

The Special Master: Three-dimensional.

The Witness: No, it is—that's a term that is applied to a drawing that shows the—usually the top view, the side view and the front view of an airplane.

It shows the overall configuration, dimensions. Usually, it has on its face wing area and other dimensions.

However—it shows wing sweep angle and so on, tail height, and other dimensional, and usually some weight information.

The reports were sufficient to define the purpose in some detail on the airplane. As I recall it, they included weight information, preliminary balance information, performance information. I believe they included Convair's projection operating costs, and I believe they included segment payload [Tr. 1936] performance—

## By Mr. Hayes:

Q. Segment what?

A. Segment payload performance on certain TWA segments.

There may have been two or three rather than one report.

I am not certain of that at the moment.

In short, the data that was presented was a brief description, sort of a summary, if you like, of the design that they

were proposing, and it was obvious that this data was developed for the purpose of briefing us and interesting us in that airplane.

Q. I remember on at least one occasion in the past you referred to some airplane as being a gleam in the eye, if I remember your words correctly.

Would you describe this design that Convair submitted to you at that time as a gleam in the eye?

A. Frankly, Mr. Hayes, I don't remember exactly how I used that term previously. I guess I could answer it this way:

With respect to their prospect of capturing Hughes as a customer, it was a gleam in the eye. The design itself certainly was sufficiently definitive at that time to permit our understanding of what it was they intended to [Tr. 1937] build, but it was certainly not a final design.

Q. Was the 880, as developed, exactly the same design as was then submitted?

A. No. In fact, I don't even think it was called the 890 then. But the 880 that finally emerged was, with respect to exterior configuration, very, very similar to the originally proposed plane. I believe they called it the Skylark at one point, but I might be wrong on that.

Things like—some rather major items like the engines to be installed were—well, engines were initially specified. The engines were not firmly selected. And other design aspects were not firmly selected and agreed upon until substantially later.

Q. Was that the plane that Convair at one time referred to as the Model 22 or was it the 880 that was the Model 22!

A. Well, the Model—well, I believe the Model 880 was called the Model 22, but I wouldn't want to infer a clear distinction between either of them to the thing that was called the Skylark, which I think was the trade name.

- Q. Did the Skylark have a model number, also?
- A. I just don't remember in that detail now, Mr. ITr. 1938 Hayes.
- Q. No prototype had been built of this plane at the time you first heard of it, I assume—
- A. No, sir.
- Q. (continuing) —is that correct?
- A. That's correct.
- Q. Do you recall when the General Dynamics board decided it would not go ahead with the 18, 19 or 20? I think it was the double-decker plane.
- A. I don't recall the General Dynamics board making that kind of a decision on either the Model 18 or 19.
- I think—as to the Model 20, I don't know.
- Q. Does your answer mean that your recollection of action by the General Dynamics board related to the Model 20 as distinguished from the Models 18 and 19?
- A. Well, I thought you asked when, and I don't remember with respect to the Model 20.
- Q. Yes. Do you recall that the General Dynamics board tone point decided not to go ahead with the Model 20?
- A. I believe that is the case. At least, I believe that that ras—I was so advised by a Convair representative.
- Q. Can you identify him?

- Tr. 1939 A. Well, I am virtually certain it was Jack evely.
- Q. Was there any actual offer by Convair to contract or the construction of the 880 prior to the time you were dvised that the General Dynamics board had turned down the Model 201
- A. I don't believe so. I am fairly sure that the 880 call man Hughes came after that occurred.

- Q. After that occurred?
- A. I think so.
- Q. When did that occur, do you recall?
- A. Well, I can't be really sure. I have the impression that it was—by that you mean my information on the board action?
  - Q. That is right.
- A. I—the thing that sticks in mind is some time early November, but I just can't be that positive. I think that's probably when it was.
- Q. In your prepared testimony, Mr. Rummel, at the bottom of page 6 you mention the appropriateness of TWA contemplating aircraft of a smaller or shorter range than the 707, that the 880 had not yet been developed, and that TWA did not know then that it would acquire that plane.

Did TWA know at that time that it would need [Tr. 1940] planes other than long-range jets?

- A. Well, I think, as I indicated earlier, we at that time and before contemplated the ultimate use of jets smaller and very likely of a shorter range configuration than the—those that would be procured for initial long-range intercontinental and transcontinental use.
- Q. And those planes that would be used on segments of distances below the distances covered by long-range jets; is that correct?
- A. Yes. As I indicated earlier, there isn't a clear line of demarcation schedulewise, but what we were contemplating ultimately was a pattern of services taking advantage of jet technology which would make the shorter range smaller jets more economical on the moderate-length haul than would use of the bigger jets be on those hauls.

So we contemplated that there would be small jets developed at some reasonable point in time that would fill out

our pattern of service and extend it into the short-range area of activities.

Q. In the fall of 1955, did you have any knowledge as to when those shorter-range jets would be developed?

- A. I don't think we had positive knowledge in the sense that there then existed specific projects or air- [Tr. 1941] planes that could be bought for delivery as of a certain time.
- Q. As of the fall of 1955, had you any assurance as to when you would be able to get such shorter-range jets?
  - A. I don't believe so.
- Q. Other airlines faced the same problem, did they not, the need for shorter-range aircraft than the long-range jets?

A. Yes.

Tr. 1942 Q. How did other airlines solve that problem, if you know?

A. Well, different airlines did different things.

United ultimately bought Caravelles.

Q. I am talking about what they did in the fall of 1955 at the moment, Mr. Rummel.

A. Well, I misunderstood your question then.

American Airlines—I am not sure if they placed an order in the fall of 1955, I had the impression it was before this, for Electras which are turboprops rather than jets.

Other airlines, Eastern and others bought Electras.

Ultimately of course, but not then, American bought jets for this kind of service.

Q. I am confining myself to 1955, Mr. Rummel.

American bought Electras you testified.

Did you say that Eastern bought Electras?

A. Yes.

Q. You did?

A. Yes.

Q. What did BOAC buy?

A. I am slightly confused by the question. You are referring now to smaller size and perhaps shorter IT. 19431 range type airplanes?

Q. Referring to the subject we have been discussing, I thought, of what airlines other than TWA did to take care of their smaller segments at the time when only long range jets were available.

The Special Master: Available for purchase?
Mr. Hayes: That is right.
For ordering at least.

A. Well, BOAC's situation was a little different.

They had ordered a substantial quantity of Comets some time before this, and my recollection is that upon ordering the longer range American jets they did so with a plan in mind of shoving the Comets into shorter range services as well as the supplementary services in the beginning.

Q. Did they also acquire turboprops, specifically the Viscount?

A. I don't think so.

Q. Your best recollection is that they did not?

A. I don't think BOAC bought the Viscounts, no.

Q. I refer you to Annex C attached to your statement, the third page thereof. You show an order of 12 Viscounts for BOAC in 1957.

[Tr. 1944] Mr. Sonnett: What page! Mr. Hayes: Annex C, the third page.

Mr. Sonnett: 1957?

Mr. Hayes: I am sorry. Wait a second. I withdraw it. My mistake. Please forgive me.

Mr. Sonnett: Forgiven.

Q. But in 1957, at least BOAC did order Viscounts to take care of their shorter segments, did they not?

A. Yes, I believe they did.

Mr. Sonnett: Just a matter of clarification, that left hand column says "Delivery." Does that indicate when the order was placed or when the planes were delivered.

The Witness: Delivery.

Mr. Hayes: Wait. This was prepared in 1955. I withdraw my concession of error and accept Mr. Sonnett's.

Mr. Sonnett: I am also glad to help in bringing out the facts. I thought there was something confised.

- Q. So that BOAC had in 1955 ordered Viscounts according to your statement, Mr. Rummel?
  - A. Yes, sir, that seems to be correct.
- Q. Some of the other airlines had also without [Tr. 1945] going through them in detail?
  - A. Ordered Viscounts?
  - Q. Yes, and Electras, turboprops.
  - A. Yes.
- Q. In at least some instances with respect to some airlines those turboprops served the same purposes as would have been served by some of the shorter range jets that you were hoping would be developed, is that correct? In the sense of serving the segments, I mean.
- A. Well, it was more true of the Electras than the Viscounts.

The Viscounts had a much shorter range than I think we were contemplating for smaller jets at that time.

- Q. Was it the judgment of TWA in the fall of 1955 to defer ordering turboprops in the hope that shorter range jets would be available at such early dates?
  - A. No, I wouldn't quite put it that way.
  - Q. How would you put it?

A. Well, I think it was a case of putting first things first, trying to find the solution to the long range highly competitive portions of our services first, particularly since initial jets were designed—being designed for those kinds of services, and then hopefully to follow by expanding the jet fleets to encompass the ITr. 1946 somewhat shorter range services.

We continued to look at airplanes like the Electra, but we certainly had the hope that we would be able to move on a reasonable timely basis into shorter range jets rather than move into turboprops.

Mr. Hayes: I am sorry. Would you give me the last part of that again? I missed something you said, the very last part of the sentence.

The Special Master: Would you read it back! (The answer was read.)

Q. Was it the judgment of TWA that it would be better to wait for the shorter range jets than to move into turbo-props? This is the fall of 1955 I am talking about.

A. No, I don't—I wouldn't want to indicate that we had come to a final position. This was the direction that I hoped we'd be able to move.

Q. You say you hoped. Did others in TWA have the same hope?

A. I think so, yes.

Q. Would you say that was the general view in TWA, that you would be able to get shorter range jets in sufficient

time so that you would not have to buy ITr. 1947] turbo-props?

A. Well, I didn't say that we thought we would be able

to do this.

I don't think we knew whether or not we could do it. We had hoped to move in this direction and contemplated then that smaller jets would be developed and felt that we should be prepared to move into that kind of equipment program when it was timely to do so.

Q. Do I understand by your answer that you had not rejected the idea of turboprops in the event a short range

jet did not develop?

- A. Well, I had not forever rejected the idea of the turboprop certainly. I was pretty well convinced that ultimately the jets would push the turboprops aside and I would hope we could move sufficiently to—into that area to avoid the need for turboprops, but I don't think I ever became convinced that that, in fact, would be the way it would work out.
- Q. As a matter of fact, even as of today quite a few turboprops are operating on various airlines, aren't they?

A. There are quite a few still in service, yes.

Q. Did you recommend in the fall of 1955 against the acquisition of any Electras or other turboprops?

Tr. 1948 A. I-well, let's see, the fall of 1955. I am

not entirely sure.

- Q. You do not have any recollection one way or the other as to the fall of 1955?
- A. Well, I strongly favored jets, Mr. Hayes, but that was for the long haul services, and I was highly skeptical of the Electra.

And I did recommend against the Electra, but I don't have a clear recollection that it was the fall of 1955 and I doubt that it was as I sit here now.

Q. Was it before or after the fall of 1955 that you recommended against the Electra?

A. Well, on at least one occasion it was after that if memory serves me correctly. I think it does.

For example, it was evaluated alongside the Electra—I mean alongside the 880 other then current possibilities, including the Electra. And I recommended that the 880 would be a better investment at that time than the Electras as I recall it.

ITr. 19751 • • • Q. Two of them ordered Douglas equipment, but American ordered the Boeing equipment. Were you ever advised by any officer of American why American chose to order Boeing equipment rather than Douglas equipment?

A. Well, I was advised by people in American who are now officers—I am not sure they were at the time the advice was received—

Q. Just identify them, please, Mr. Rummel.

A. Bill Lawrence, Bill Littlewood, and Littlewood was an officer at the time.

Q. What was Mr. Lawrence's position?

A. His position varied through the years.

Q. I mean the fall of 1955, as far as you can recall.

A. Well, he was involved in some of the American equipment negotiations. I am quite sure at that time he was at the Tulsa-American facility.

Q. Doing work similar to work you were doing for

A. No. Well, part of it.

Q. Did you get the same advice from both of these gentlemen, the same information, rather?

A. Essentially, yes.

Q. Were there any others who gave you this informa-

A. I don't recall any. There certainly could have been.
[Tr. 1976] Q. What was the information, Mr. Rummel?

A. Well, the gist of it was that they believed Boeing was a technically superior airplane and that combined with early deliveries compared to Douglas was the primary reasons for their going the Boeing route.

And one of them, I don't remember which now, indicated some concern over the Boeing management which I understood at the time stemmed from Boeing's earlier handling

of the Stratocruiser series.

That's all that comes into mind now.

Q. Both of them mentioned early deliveries?

A. Compared to Douglas, yes, as one of the factors.

Q. I think we have shown or it has already been established, if I remember rightly, that the Boeing deliveries were to be roughly a year ahead of the Douglas deliveries, I think. Maybe I am wrong on that. I am thinking of the 707 as against the Douglas with the J57, and I think the gap was less with respect to the 331 and the Douglas with the J75. I think it was six or seven months.

A. The gap was less on the international airplanes.

Q. Yes, I think that is in the record. I just wanted to be sure that I did not misstate the record as you recall it.

Tr. 1977 Do I. Mr. Rummel?

A. I'm not certain that it was exactly a year.

I note at page 2 of Annex C, it shows Pan Am scheduled for Douglas DC-8 deliveries early in 1960, and for Boeing 707s early in 1959.

Q. Yes, I think the record-

A. But I don't think we can assume from that as pre-

Tr. 1998] \* \* \* Examination (cont'd) by Mr. Hayes:

Q. According to your prepared statement, the schedule attached to Annex D, the deliveries of the 131 Boeings to TWA—that is page 4, I believe, of Annex D—of certificated planes that were available for scheduled service were made between March 7, 1959 and August 1, 1959, a total of 15 planes; is that correct, Mr. Rummel?

A. Yes, those were certificated to the transport [Tr. 1999] category.

Q. And available for scheduled service?

A. Yes.

Q. Whereas, the 331s, which the schedule of deliveries of which appears on page 10 of Annex D, began on November 5, 1959, and ended July 1. 1960, all certificated and available for service; is that correct?

A. Yes. Incidentally, Mr. Hayes, I do have some dates that you requested yesterday. At any time you would like for me to read them in, I will be happy to do so.

Q. Fire away. Go ahead.

A. TWA started jet service San Francisco to New York March 20, 1959.

American Airlines started jet service to San Francisco-New York November 1, 1959.

United Airlines started jet service San Francisco to New York September 18, 1959.

American Airlines started jet service Januar 25, 1959.

The Special Master: From where?

The Witness: Well, the recollection I have—I didn't specifically check that overnight—it is, I believe, Los Angeles and New York or possibly New York-Los Angeles.

## Tr. 20001 By Mr. Hayes:

O. What was that date?

A. January 15, 1959. American received certification, that is route authority to serve San Francisco-New York on April 2, 1959.

Pan American started jet service across the Atlantic on a TWA segment October 26, 1958.

BOAC started jet service across the Atlantic on a TWA segment October 4, 1958.

This is in line—this last item is in line with the correction that I mentioned yesterday, and undoubtedly this service was provided with the Comet IV series.

Q. You mean the October 4, 1958?

A. Yes, sir.

Q. Those were the Comets?

A. Those were Comets. I believe that's what you requested, Mr. Hayes.

Q. Do you have there the date of TWA on New York-Los Angeles !

A. No. I do not.

Q. I think that was part of it, if I remember rightly.

Well, I didn't remember it, but it will be easy to get.

Tr. 2001] The Special Master: Would you get thatf

The Witness: Yes, sir.

- Q. Were the 131s which were received in 1959 scheduled for domestic or international service by TWA?
  - A. Domestic.

Q. Entirely!

A. Yes. They were flown on domestic segments.

Q. What planes were eventually flown by TWA on the transcontinental services?

A. Well, many different kinds. You mean what jets?

Q. Between the 131 and 331s.

The Special Master: Transcontinental?

Mr. Hayes: Transatlantic, I meant.

The Special Master: He meant transatlantic.

Mr. Hayes: Did I say transcontinental? I am sorry. I meant transatlantic.

A. Well, the 331s were initially flown in the Atlantic and European services. The services later extended beyond Europe, and a certain number of these planes later were flown in transcontinental services.

Q. Do you mean that all 12 of the 331s which TWA received were all at one time in transatlantic service? When I say "at one time," I am speaking up to the end of CTr. 2002 1960.

A. I didn't say that.

Q. That was what I thought maybe you said. Were some of the 331s, and again I am limiting this to up to December 31, 1960, flown in transatlantic service and some in transcontinental service?

A. Yes.

Q Do you remember how many were in each service!

A. Not exactly, Mr. Hayes. I believe this varied somewhat with the season, but it was on the order from three to possibly four, or thereabouts. I just don't remember the exact number.

Q. Three to four what?

A. 331s in domestic service. I thought that's what you were asking.

Q. Three to four 331s were in domestic service and the balance of the 331s were in transatlantic service?

A. Yes. However, the initially delivered 331s went into transatlantic service?

- Q. Were the 131s at any time flown in transatlantic service?
  - A. I don't believe so.

[Tr. 2006] • • • Q. Did Mr. Cocke play an important role in the decision to use the 131s solely in domestic service?

A. Yes, I think Mr. Cocke's views were strongly respected.

Q. What were his views with respect to the use of the

- A. Well, his views, broadly, as I recall them, were that we didn't have enough airplanes to do what he really wanted to do, which was to get both the Atlantic and the domestic area of operations as nearly simultaneously as possible, as our competitors were hitting them, and that on balance rather than be spread too thin in domestic, and rather than operating initially in both domestic and international, that he favored putting the 131s in domestic services and making a bigger splash there.
- Q. And make what?
- A. I guess that wasn't very good English.
- Q. I didn't hear your words.

Mr. Williams: A splash.

ITr. 2007] Mr. Hayes: Oh, splash. I didn't hear the word.

The Witness: Making a bigger impact there.

# By Mr. Hayes:

- Q. Even though he realized that this might mean that TWA would be at a disadvantage on the transatlantic service vis-a-vis Pan American?
  - A. Well, it's hard for me to say exactly what he realized.
  - Q. I mean did he say that?

A. I think what he was saying, my impression is that even though it was recognized that there would be a disadvantage in the Atlantic, that within the limited number of airplanes that we had available, this was the best overall plan, rather than operate too thinly in both areas.

Q. Were there other officers of TWA who believed some

of the 131s should be used in international service?

A. Well, I can't be very specific. There were views expressed that it would be desirable to operate a few in the Atlantic, but I don't remember who expressed in detail views during these various discussions in which I participated.

- Q. Was Mr. Pierson, the chairman of the board, ITr. 2008I one of the ones who believed, so far as you know, that some of the 131s should be in international service?
  - A. I don't remember that.
- Q. Can you remember any officer of TWA at that time who was of the opinion that some of the 131s should be used in international service?
- A. Well, as I say, there was discussion on the point, and the issue was resolved. I don't remember any great dissenters at the time of the ultimate resolution, and I am at a loss at the moment to try to remember—to remember just who said what and what the individual views were.
- Q. Do you recall, Mr. Rummel, what your forecast was in 1955, as to what TWA's traffic was expected to be in 1960?
  - A. No, I don't.
  - Q. Or in 1961†
- A. I don't remember the figures.
- Q. Are there any records available to you which would refresh your recolleption?
- A. I don't know for sure.

Mr. Hayes: May I ask the witness to find if there are any records which would refresh his recollection as to his 1955 and—

# [Tr. 2009] By Mr. Hayes:

Q. If I asked you the same questions about 1956 forecast, would your answers be the same, that you do not remember?

A. Gee, I just don't remember the numbers.

Mr. Hayes: May I ask the witness to determine if there are any records which would refresh his recollection with respect to 1955 and 1956 forecasts as to expected 1960 and 1961 traffic?

Mr. Sonnett: Mr. Brownell, I oppose that request. We have made voluminous documentary production, all material on these subjects, long, long ago. Those documents have been available to counsel for a long time.

I don't think this witness' examination at this hearing should be prolonged by his now having to go back and make further documentary searches. They have had all the documentary discovery they are entitled to, it seems to me.

Mr. Hayes: This is not discovery. This bears directly on the issues here.

The Special Master: Were documents containing this information produced?

Mr. Sonnett: All documents that they sought [Tr. 2010] under their very broad demands, which included all kinds of forecasts of this type were produced by the hundreds of thousands and they went over them, and picked what they wanted.

They have had those documents for some years now. Whatever there is, we produced. To go back through this file search business is really quite a burden.

Mr. Hayes: Mr. Martin advises me that we may have something that was produced. As we sit here, we don't know. I have never seen them. I know that

So I will defer the request and I may have to make it again. But by saying this, I am merely trying to expedite affairs. I am not conceding that just because in the course of discovery when I guess millions of documents were produced, documents such as I requested may have been produced, there may never have been copies taken of them. Nobody knew at that time that such documentation as this might ever become relevant even.

It may have been produced for inspection and no copies taken. It seems to me that it would be a very simple thing for Mr. Rummel to direct somebody [Tr. 2011] where to go to find these forecasts, if they existed. It does not require the witness' time one iota.

Mr. Sonnett: No. 1, it is not a very simple thing. It is a very burdensome thing.

Mr. Hayes: But for the present, I will withdraw the request.

The Special Master: We will close the argument and go on with the examination.

Mr. Sonnett: No. 2, I don't think the defendants have any right to any further discovery in this case. It is a hearing. It is not a discovery examination.

Mr. Hayes: I am delighted you made that distinction.

Mr. Sonnett: Well, I think there is a very vital distinction.

Mr. Hayes: There is no discovery being asked for.

# By Mr. Hayes:

Q. Do you know whether or not in mid-December 1955 or before that—fairly soon before that—any request was made of The Boeing Company by you or Mr. Hughes as to possible delivery dates on Boeing aircraft?

A. Yes.

ITr. 20121 Q. Who made the request?

- A. I discussed deliveries with Boeing and I believe that Mr. Hughes had discussions at that same time with Boeing on deliveries.
- Q. With whom did you have your discussions? With whom at Boeing?
- A. With the Boeing representatives with whom I was in contact. I believe this included Harold Olsen, George Sanborn, I am pretty sure Bruce Connelly, and I am pretty sure Ed Wells, but I—I am not completely sure.

Q. I believe Mr. Olsen was the attorney for Boeing, is

A. He is an attorney for Boeing, yes.

Q. Isn't he in that law firm that represents Boeing? He is not a house counsel, is he?

A. No, he is outside counsel.

Q. Was this all one conversation or were there several conversations with these various people?

A. Several.

Q. Do you recall what dates they told you would be the available delivery dates for Boeings?

The Special Master: That is pretty broad, isn't it?

Mr. Hayes: Yes. I don't know whether he ITr. 2013] recalls them or not.

The Special Master: Mid-1955?

Mr. Hayes: No, December 1955. I said mid. December 1955.

A. Not exactly, but I think they were a little worse than we finally got.

Q. Was this for both the 131s and the 331s?

A. My comment related to the 131s. I am not sure that we made much headway on the 331s.

Q. I don't know what you mean by that.

A. With respect to improving the deliveries over those that they at that time were offering.

Q. They did give you dates, though, for the 331st Or do you mean that they didn't even give you dates?

A. They—dates were available. I believe the dates which were mentioned in these discussions had already been given to Hughes. I don't know—I suspect they were given to Hughes first, but I am not really sure.

Q. You said Mr. Hughes also, you thought, spoke to the Boeing people. Do you know to whom he spoke with respect to possible delivery dates in mid-December of 1955?

A. Well, I can't be entirely certain as to that point in time, but I know he had discussed this sort of ITr. 2014 thing with Bill Allen. I may have known at the time just who it was.

Q. Do you know if he had any discussions with Mr. Wells?

A. Yes, he did have discussions with Wells, and I certainly believe now it would have included deliveries. I am not sure I can state that exact fact from memory.

Q. Did Mr. Hughes and you check with one another as to the delivery dates that you had separately received from Boeing representatives?

- A. Well, we did discuss dates and the effect of it was a check.
  - Q. I am sorry.
- A. We discussed the dates and had there been any differences of information, it would have been very clear. I don't remember specifically setting out to check, but the check was there, nonetheless.

[Tr. 2015] Q. What I am trying to find out is whether you have any recollection as to whether Boeing gave Mr. Hughes and you different prospective delivery dates at that time.

- A. I don't recall that occurring, Mr. Hayes.
- Q. Do you have any recollection as to whether at that time—and I am confining myself now to mid-December of 1955—Boeing's prospective delivery dates as to the 131s would be on April 1, 1959?
- A. No, I am not that sure. I have the general recollection that we made some progress on the dates during the negotiations with Boeing, but I don't remember it exactly.
- Q. You mean between December and the signing of the contract you made some progress?
- A. Well, between the time that we were seriously talking to Boeing and the time the contract was signed.
- Q. Did you make progress between the dates that were given you in December 1955, whatever the dates were, and the time the contract was signed, do you recall, so far as the 131s are concerned?
- A. Well, I have the impression now that we picked up a month or so, but I'm not—I just can't be entirely specific.

  [Tr. 2016] Q. If I understand what you—
- A. That is on the early planes. I don't remember doing much of the later ones.

Q. As to the 331s, do you recall that you made progress there too by improving delivery positions from those stated in December 1955 when you signed the contract later?

A. Well, I don't recall that and maybe I should make it clear that the dates being discussed then were dates which Boeing advised would be the dates providing—well, contingent on what other customers might do in the meantime to some extent.

In other words, I don't recall these dates, for example, having been presented in the light they were guaranteed irrespective of actions that we might take.

Q. Have you finished, Mr. Rummel?

A. Yes, sir.

Mr. Hayes: Could I have the first part of that answer read?

(The answer was read.)

Q. No, my question was, Mr. Rummel, if you recall whether by the time the contract was signed for the 331s, you had been able to negotiate an improvement in deliveries or whatever dates had been given to you in [Tr. 2017] December 1955 for the 331s?

A. I don't recall that occurring.

The problem that existed was to hold onto Boeing's offers, and I probably should add that I—I'm not entirely sure at the moment what the form of the dates for deliveries were at that time.

Q. Do you recall ever having been advised by Boeing, either directly or through Mr. Hughes, that Boeing—and this is in December 1955—I am confining myself at that time—I will start over again because of the interruption of myself by myself—do you recall at that time having been advised either by Boeing or by Mr. Hughes that Boeing

had stated that it would be prepared to deliver the first 131 a month after the first delivery to American Airlines?

- A. No.
- Q. You do not?
- A. I do not.
- Q. As to the 331s, were you ever advised either directly by Boeing or by Mr. Hughes that Boeing was prepared to deliver the first 331 to TWA three months after its first delivery to Pan American?

A. Well, I don't specifically recall it now, Mr. Hayes. I'd hate to—I mean I wouldn't want to be in the [Tr. 2018] position of having sworn it didn't occur, because we spent a great deal of time then and then later fighting with Boeing on sequential deliveries.

And in the course of extended discussions, things of this type did arise, but I'm not clear on whether or not—at the moment, whether or not that particular statement was made by Boeing or not at that time.

# ITr. 2050] • • • Examination (cont'd) by Mr. Hayes:

- Q. Do you recall, Mr. Rummel, how many engines were assigned by the Tool Company to Boeing?
  - A. No, I don't, Mr. Hayes.
  - Q. Does 200 click in your memory?
  - A. No.

Mr. Hayes: Would you mark this, please, Defendants' Exhibit 50 for identification? It is a letter agreement dated August 19, 1957, on the letterhead of Hughes Tool Company signed by Hughes Tool Company by C. H. Price, accepted by Boeing Airplane Company, and I cannot make out the signature, on the 22nd of August 1957, to which are attached

a letter addressed to Pratt & Whitney, on the letter head of Hughes Tool Company, dated August 19, 1957, an agreement to consent to the foregoing delivery schedule, and I think it is the first day of September 1957, by [Tr. 2051] United Aircraft Corporation, signed by a vice president whose name would be Perkins or Parkins—do you know? It looks like one or the other. Let us say it is undecipherable. To which is also attached the consent to assignment dated September 3, 1957, signed by United Aircraft Corporation by a vice president, whose name I can't read, and Boeing Airplane by a vice president whose name I can't read.

Mr. Hayes: I might say I don't intend to offer these documents in evidence. I am using them just, if I can, to refresh Mr. Rummel's recollection.

### By Mr. Hayes:

Q. I have put clips on the first page of the first document, and the first page of the second document, I described

[Tr. 2052] I direct your attention to the first paragraph of the first page of the first document and the first paragraph of the first page of the second document.

I ask you, Mr. Rummel, if that refreshes your recollection as to whether the number of engines involved was 200.

- A. I read the two paragraphs.
- Q. Does that refresh your recollection that the number of engines involved in the assignment was 200?
- A. No, it doesn't.
- Q. What you do remember, however, is that there was an assignment of engines by Toolco to Boeing, but what you do not remember is the number of engines; is that correct!

A. Well, my recollection is the same that I expressed this morning on that point.

Q. That is my recollection of what you expressed this

morning. Have I stated it correctly?

A. Yes, I recall that at some point—I am not sure when—this seems to say when—engines were either transferred or sold or in some manner the rights were given up by Hughes to others.

Q. The contract entered into at that time provided for more airplanes of the 131 series, without any delay in ITr. 2053 delivery dates as against the original contract, does it not?

A. Well, I believe a definite relationship existed between availability of engines and availability of airplanes during the time that some of these negotiations occurred.

- Q. No. What I am asking you is if it is not a fact that the additional aircraft that were ordered at the time of the transfer of the engines to Boeing provided for deliveries which were no later than the dates contained in the original March contract between the Hughes Tool Company and Boeing.
  - A. I believe that's correct.
- Q. Did you make efforts, after the contracts had been signed, to improve the delivery positions that had been agreed to between Boeing and Hughes Tool Company?
  - A. Yes.
  - Q. Were you successful in those efforts?
- A. No, I don't believe we were. At least, I don't recall any successes in obtaining agreements from Boeing in addition to those contained in the contract.
- Q. With whom in Boeing did you have conversations looking to improve delivery positions? I mean improved over the contract dates.

ITr. 2054] A. They included Mr. Connelly, Mr. Allen, I believe Mr. Olsen and possibly some others.

I don't recall this as having occurred immediately subsequent to signing the supplemental agreement.

Q. When do you recall that these conversations oc-

A. I am not really sure, Mr. Hayes. We never lost sight of the desire to improve Boeing's commitments with respect to deliveries, and I think seized on every opportunity that appeared to be open to us to persuade Boeing to improve its deliveries.

However, I don't think we jumped back in that immediately following signing supplemental agreements. I think we waited a respectable period. Just what that was, I don't know.

Q. What did Mr. Connelly, for example, say to you as to reasons for not improving the deliveries?

A. Well, the deliveries that I am referring to are Boeing's contractual commitments rather than the calendar deliveries that were anticipated at any point in time following the signing.

Q. I am asking you what you mean by the contractual delivery. What contracts are you referring to?

A. Oh, Hughes Tool Company contracts.

[Tr. 2055] Q. Go ahead.

A. Between Hughes Tool and Boeing.

Q. Right. What reasons, if any, did Mr. Connelly give you for declining to make a change in deliveries?

A. Well, he asserted that commitments on sequential deliveries was not compatible to Boeing's policy and in his view was not wholly practical.

Q. And what?

A. And in his view is not wholly practical.

- Q. Would you explain that, please?
- A. Explain what?
- Q. Something about sequential deliveries.
- A. Yes. I mean commitments to deliver in sequence between customers and between airplanes.
  - Q. Between different customers?
  - A. Well-
- Q. Is that what you mean? I don't understand what you mean, Mr. Rummel. I am trying to.
- A. Oh, I am talking about the contractual commitment to deliver on Boeing's part airplanes in specific sequence one to the other.
- Q. You mean the sequence of the planes to be delivered to Hughes Tool Company?
  - A. No, but it would include that.

ITr. 20561 Q. Do you mean the sequence of deliveries both to the Hughes Tool Company and to other customers?

A. I mean total production during the period in which the airplanes would be delivered to Hughes Tool.

I am trying to distinguish, Mr. Hayes, between the Boeing method of contracting for deliveries, which was so many airplanes per month by month-end, and with a sequence commitment airplane-to-airplane.

Maybe I can give you an example, if I am not clear.

- Q. I wish you would, because I am afraid it is not clear to me.
- A. What we were seeking was commitments along the line that the fourth, for example—now, these numbers aren't real—I am only trying to make an example.
  - Q. Yes, this is an example. I understand.
- A. We knew the objective of getting the first couldn't be not at that time, but, say, the fourth airplane that would be assigned to Hughes Tool in production sequence and in

delivery sequence, and that Boeing would commit, so that they would not deliver Airplane No. 5 before they delivered Airplane No. 4. No. 5 perhaps might be assigned another airplane.

Q. Another airline, you mean?

[Tr. 2057] A. They would be specific airplanes to customers which, indeed, they had to do anyway, but they would then, additionally, commit to deliver in a definite sequence.

Once a sequence was determined, then we would have felt assured that we would have received them in that sequence as opposed to delivery by months, which was quite a different thing.

Q. See if I understand you, Mr. Rummel, because I am not sure that I do.

Just following a monthly sequence, it might be that other customers would get airplanes before TWA received airplanes, and that you wanted to avoid this happening at least as to particular airplanes?

A. I will take another example, Mr. Hayes. Perhaps this will help.

Assuming that Boeing committed to deliver during a certain month three airplanes each to two customers. We just didn't want the other customer to get the first three and Hughes to get the last three. We wanted a commitment on the sequence of delivery.

Q. Did Boeing tell you that they had any commitments whereby they were required to make deliveries to other customers before they did to TWA?

ITr. 2058 A. During this particular phase and during the heat of negotiations, we were given to understand that there were commitments which we definitely construed as being of a nature of a commitment on sequencing—in short,

that American and Pan Am had been unofficially told that they would receive so many airplanes before anyone else did, other than in American's case Pan American.

- Q. Other than what?
- A. In American's case Pan American.
- Q. Other than in American's case Pan American?
- A. Yes.
- Q. You mean Pan American was to have precedence over all airlines, is that it?
  - A. Yes.
  - Q. Then American-
  - A. Yes.
- Q. (continuing) —had precedence over some other air-
- A. Well, to a degree.
- Q. Except that American had no precedence over Pan American as to the original deliveries; is that right?
  - A. I didn't say that, Mr. Hayes.
- Q. Didn't you? I thought that was what you meant. That's what I am trying to find out.

ITr. 2059] A. No.

- Q. Would you straighten me out, please, Mr. Rummel?
- A. Well, I don't—I am a little vague on the specifics, but I think what we were told was, first, we are talking about two things here, that Boeing would not agree, as I indicated, to specific sequential commitments, and then as we continued to press for earlier deliveries, it became known that Boeing had agreed—at least this was our belief as a result of these sessions—that X number of planes would be delivered to Pan American before anyone else got any, and that American would receive X number before any other airlines got any.

Now, I don't remember if that was divided between international and domestic or not. It might have been. I just don't remember all of the particularity.

Q. Were you told how many airplanes were involved in these preferences that were given to Pan American and American?

A. I don't remember, Mr. Hayes, if it was specifically stated or if we derived it from scraps of information we were able to put together at the time.

We had a definite impression as a result of this negotiation as to how much it was, but I wouldn't want to state that it was clearly stated then.

[Tr. 2060] Q. You do not recall the numbers available!

A. Well, my impression is that it was a very limited number. I believe it was either three or four in Pan American's case, and two or three—I am just not sure now—in American's case.

Q. Would it be as many as six in Pan American's case!

A. I—as I recall—and I am a little vague—information that was developed during this, as I say, heat of the negotiation, I don't have the impression now that it was that many.

[Tr. 2061] Q. Was this information that Mr. Connelly gave you?

A. Frankly, I can't be sure which—who stated it, and it wasn't—it was stated at the time off the record, so to speak.

Q. It was either Mr. Connelly or Mr. Allen.

A. It was not Mr. Allen.

Q. It was not Mr. Allen. It was either-

A. And I believe I indicated that these negotiations embraced—were in the presence of others. I don't recall just who they may have been.

Q. Did Mr. Connelly or whoever it was, Boeing representative, I will say, give you any reasons why preferences were given to Pan American and American?

A. Well, we understood it was because they had ordered

Q. Is that what we were told by the Boeing people?

A. This is a very definite impression that we had.

Q. Did I understand you to say before that these preferences were side agreements, were informal agreements that Boeing had made with Pan American and American?

A. Well, that's the impression that I have, because this—this was in the nature of—in my view and in the view of my associates—in the nature of agreeing to ITr. 2062 sequencing which at the time the very thing that Boeing claimed was contrary to its policy and with which they would not agree in our case.

So this became quite an issue.

As I indicated in earlier testimony, the engineering and certification aspects of plane construction, particularly when there are differences between configurations for customers are such that some normal grouping, three planes, for example, in sequence initially, would not be either unusual or an abnormal situation.

Q. Who were the associates to whom you just referred? You said in the opinion of me and my associates.

What associates?

- A. Mr. West was involved in some of these negotiations, and I believe Mr. Cook was.
  - Q. Are those the only ones you remember?
- A. I'm not sure about Mr. Rourke. That's all I specifically remember, yes.
  - Q. Was Mr. Hughes involved?
- A. Mr. Hughes was not involved personally, but he was involved through my conversations with him.

By that I mean he was not involved personally with Boeing as far as being present at meetings were concerned. There may have been phone calls.

[Tr. 2063] Q. He was aware, was he, of your conversations with Boeing in efforts to get improved delivery positions?

A. Yes.

Q. Was he in agreement with you in that regard?

A. He was in a agreement that efforts should be made to improve our delivery positions.

Q. Was he in agreement with you that other airlines should not receive preferences in deliveries over TWA!

A. Well, here it is a matter of degree, Mr. Hayes.

I wouldn't—I don't remember Mr. Hughes indicating that—well, it is not clear, I guess that—on the point. I remember that he was highly sympathetic to our getting additional—that is, getting earlier deliveries.

Q. At the time that the contracts were entered into, did you know of the preferences that were to be enjoyed by Pan American over all others and by American over others than Pan American?

A. Well, I certainly was well aware that earlier deliveries had been committed to Pan American and to American, but I don't recall having known of Boeing's intent to limit or treat this thing sequentially.

Had Boeing merely followed its contractual com-ITr. 2064] mitments, substantially the effect of sequencing would have been achieved in any event. What sequencing language would gain would be simply that even though airplanes might be ready for delivery if such an airplane was not in the committed sequence, then delivery would be withheld—would have been withheld until the proper sequence occurred, and this is one of the things that Boeing was seeking to avoid by not committing to sequencing language.

Q. What reasons did they give for not wanting to deliver an airplane that was ready?

A. It wasn't quite that way.

Mr. Sonnett: Read that back, please.

Mr. Hayes: That's the way I understood the wit-

ness' answer.

Mr. Sonnett: I am not sure I heard you properly.

Mr. Hayes: I wonder maybe you misunderstood the witness.

Maybe I did.

(The question was read.)

Mr. Sonnett: That isn't what he testified to.

Mr. Hayes: That is what I understood Mr. Rummel to say with respect to sequencing.

ITr. 2065] The Witness: No.

Q. Maybe you can state it over again. Maybe that would be the easiest way.

A. There is no need to state it over. Let me try to clarify it this way: That's exactly what they wanted to be able to do and that's why they didn't want the sequencing language.

Mr. Sonnett: What is it that they wanted to be able to do? I thought I understood you before.

The Witness: It is so simple.

Mr. Hayes: Thank you, Mr. Sonnett.

The Witness: Perhaps I could explain it this way?

Commitment on deliveries in a sequential manner means that Boeing would have committed to deliver airplanes by specific serial number in specific sequence to specific customers at a specific time, even though the time might be bracketed by deliveries per

month. We weren't specifically asked that they change that.

Now, with respect to delays, in the normal course of building airplanes and in the normal course of airlines accepting airplanes, one can never be ITr. 2066 entirely sure precisely when an airplane will be ready for delivery. Some little adjustment might be required or an accessory might fail and require replacement or something else may come up, which would upset the intended delivery by either a matter of a day or two or possibly more. On the other hand perhaps for one reason or another an airplane would finally—be completed a day or two before the other, again in the normal course of building planes in an efficient way.

Boeing sought to avoid upsetting that. They only wanted to be committed to deliver X number of airplanes per month. Had they committed to deliver in accordance with the specific sequencing, it is possible an airplane would be ready out of sequence, but they in that event would have been contractually limited to hold the airplane until it fell into the right sequence and this they did not want to be committed to.

It is certainly not unreasonable from their point of view but it didn't serve the purpose that we were trying to gain at the time.

- Q. Was it your position—I think your answer clarified this—that if a TWA plane was ready, they should [Tr. 2067] deliver it to you even though it might have been out of their contractual sequence?
  - A. Well, Boeing didn't agree to sequence.
- Q. Did they have any agreement with either Pan American or American that you discovered whereby they did

agree to sequence in the sense that Pan American got some preferences over American and American got the preferences over the others?

A. That is the only area which bordered on that that I can recall.

Q. So that they did in those two instances at least agree to deliveries to particular airlines before deliveries to other airlines?

A. Well, but to be clear not by sequence. This was by just X numbers of planes.

Q. Before deliveries-

A. This was—we are getting very much into the detail of the kind of arguments we had.

Strictly I suppose they did not agree to sequencing in terms of serial by serial. They simply had agreed there would be X numbers of planes delivered, irrespective of what the serial might be before others were.

- Q. Whether you call it sequence or not, there was a commitment that they would deliver a certain number of ITr. 2063 planes to each of those two airlines before deliveries to others?
  - A. I don't-I'm not sure it was of record.
- Q. I think you testified that it was your recollection that it was not of record, is that right?
- A. I'd be very surprised if it was. This is the impression I now have.
- Q. When you testified earlier in this cross-examination as to Boeing's practice to equalize delivery position, were you aware of these commitments that had been made to Pan American and American?
- A. Well, I think I've already answered that by indicating that my present recollection is that this is a facet that was uncovered during these negotiations, that is, in terms of X numbers of airplanes being delivered.

We were aware approximately what the delivery positions committed per month was for these other customers.

Q. Do you recall any provision in the contracts that were entered into for the original purchase of the eight airplanes to the effect that Boeing warranted that it would not deliver more than 12 airplanes to other customers before the first delivery to Hughes Tool Company?

A. I don't remember that.

Mr. Hayes: This is one of the contracts ITr. 2069] that is not in Exhibit R-1 which we plan to offer as I say.

Suppose I have just this one-

The Special Master: That provision is in the one you did offer.

Mr. Hayes: Is it?

The Special Master: Yes.

The Witness: I remember reading it this morning.

Mr. Hayes: Oh, that was in the letter agreement, ves.

The Special Master: It provided for eight airplanes.

Mr. Hayes: That's right. It was the January agreement.

I am speaking of the formal contract.

Q. You don't recall that provision at all?

A. No more than I did this morning when I noted it in the paper that was presented.

Q. In your prepared statement, Mr. Rummel, page 8, at the end of Paragraph No. 1, the last sentence you state that the Boeing 131 was suitable for use on TWA's domestic routes.

By the word "suitable" did you mean that it [Tr. 2070] would merely get by or it was entirely suitable?

- A. I meant it as practical.
- Q. Was it an efficient airplane for use on TWA's domes-
  - A. Yes.
- Q. In your opinion, was it the best jet airplane then available for use on TWA's domestic routes?
  - A. Boeing!
  - Q. Yes, sir.
  - A. Yes, I though the Boeing was the best.
- Q. It was just that I did not know what you meant by the word "suitable." It could mean that you could get by with it just barely or that you could be enthusiastic about it.
- A. Well, it had sufficient range capability to be reliably applied or let's say be applied to transcontinental non-stop schedules with good prospect of maintaining schedule reliability.
- Q. In other words, you say that it was well suited, do you not, for use on the domestic routes?
- A. It was as well suited as any jets that were then available.
- Q. That is what I am talking about, the jets then available.
- ITr. 2070Al In the next paragraph numbered 2, the sentence beginning with the last word on page 8, you mention 707s as being suitable for use on TWA's international routes.

Do you similarly mean there that those 331s were well suited for use on TWA's international routes?

Tr. 2071] A. Well, I meant they were suitable for certain gateway services, and that international operations could be undertaken on a practical basis with this kind of an airplane.

Q. And they were at least as well suited as any other jet then in existence?

A. I think I did go into the comparison between this and other jets but it was my view that the Boeing was somewhat better suited for long-range services than what was then being offered by Douglas.

Q. When did Boeing, so far as you know, first propose.

specifications for the 3311

A. Gee, my recollection is about the same as before on

that point, Mr. Hayes.

Q. I don't think I ever asked you this specific question before, Mr. Rummel. I am sure I didn't. So I don't know what your recollection was.

A. Well, my recollection is that it was during the fall of 1955, perhaps late fall, that the configuration emerged

However, I'm not sure when specific proposals were offered.

The Special Master: Is the significance of this question detail specifications—

(Tr. 2072) Mr. Hayes: Yes.

The Special Master: —as distinguished from a proposal configuration?

Mr. Hayes: Yes.

The Special Master: What is the purpose of that!

Mr. Hayes: To show when the international jet became available, that is the purpose, the 331.

The Special Master: Does it make any difference

when the specifications were available?

Mr. Hayes: Until at least, as I understand it, the basic specification was decided upon no offer could be formally made to a customer.

# By Mr. Hayes:

# Q. Am I right on that?

The Special Master: We have the dates of the offers, don't we?

Mr. Hayes: Not yet.

A. It depends on what you mean by offer, I guess, Mr. Hayes.

Perhaps it is a legal term that you are using and I'm

using it in the terms of the practices that existed.

Thr. 2073] There were quite a few discussions with the manufacturers on possibilities of using more powerful engines, and I had many discussions with Boeing well before that time even in advance of working on the Model 18 of wanting an airplane which I viewed as being much more suitable for international than they then offered.

Mr. Hayes: I ask that there be marked for identification a letter addressed by Boeing Airplane Company, signed by Mr. Connelly, to Hughes Tool Company, dated January 6, 1956, Exhibit 51.

(Letter from Boeing Airplane Company, signed by Mr. Connelly, to Hughes Tool Company, dated January 6, 1956, marked Defendants' Exhibit 51 for identification, as of this date.)

- Q. Will you look, please, Mr. Rummel, at Defendants' Exhibit 51 for identification?
  - A. I've read it, Mr. Hayes.
- Q. Did Defendants' Exhibit 51 come to your attention at or about the date it bears, or a copy of it?
  - A. I'm not certain.
- Q. Do you recall when the first formal offer was made by Boeing to Hughes Tool Company?
  - A. No, I don't definitely.

- Q. Defendants' Exhibit 51 does relate to the 311, [Tr. 2074] does it not?
  - A. It relates—it says for the 320.
  - Q. That's the same, the 331 being TWA and the 320-
- A. 331 is the designation of the 320 manufactured to Hughes Tool specifications.
- Q. When you say Hughes Tool you really mean the TWA specifications, do you not?
  - A. Yes.
- Q. In Paragraph No. 1 there are set forth basic specifications with dates of November 15, 1955 revised December 5, 1955.

Is it your recollection that that was the date of the original detailed specifications of the 331?

A. Well, I can't be sure from this, Mr. Hayes.

I think I indicated in prior testimony that the month of November seemed to flash into my mind as about the time that the 300 series crystallized.

Now, Boeing had the practice of giving us even preliminary specifications on a regular basis. Whenever they had something new to offer, usually we would receive the specification.

This certainly indicates that the 320 concept was well established by November 15th, but I can't be sure from this

that that's the earliest time.

[Tr. 2075] Q. Had any airline ordered the 320 series by November 15, 1955 or by December 6, 1955, so far as you know?

A. I think I'd have to answer that this way.

The initial Pan American order was for a very large number of planes for international service.

Q. I am sorry. I missed some words there.

A. The initial Pan American order was for a large number of planes and obviously for international service.

What the detailed contractual arrangements in this respect between Pan Am and Boeing were I don't know, but many of those planes became international airplanes.

Q. Are you saying that you don't know whether the original Pan American contract incorporated the specifications set forth in Paragraph 1 of Defendants' Exhibit 51?

A. No, I didn't say that, Mr. Hayes, and I would doubt if that were true.

- Q. You believe that the original Pan American contract did incorporate the specifications referred to in Paragraph 1 of Defendants' Exhibit 51?
  - A. No.
  - Q. Maybe we misunderstood each other, Mr. Rummel.

What is your recollection as to whether the original Pan American contract referred to the basic [Tr 2076] specifications of the 320 series, that it did or it didn't.

A. Well, my recollection was that Pan American ordered Boeing jets as they were configured at the time the order was placed, and that following that time a far better international airplane emerged, and that the order ultimately consisted primarily of the international airplane.

Q. The original order was confined to the 120 series, was it not?

- A. No, I didn't say that, Mr. Hayes.
- Q. I am asking you if you did.

The Special Master: The original Pan American order?

Mr. Hayes: That's right, the original Pan American order.

A. I am not clear at the moment as to what the identification of the plane was when the order was initially placed.

Q. Did the Attachment A, the delivery schedule, to Defendants' Exhibit 51 for identification ever come to your attention, Mr. Rummel?

A. I suspect that it did, but I can't be quite positive as to this particular piece of paper.

[Tr. 2077] Q. The contract for the 331s according to your statement was made on March 19, 1956.

You have testified that even in 1955 you and Mr. Hughes had been negotiating with Boeing for the 331s.

Did those negotiations continue up until the time the contract was executed on March 19, 1956?

A. Yes, I would say they were—they continued through that period.

Q. Were improvements in delivery dates negotiated prior to the time the contract was signed?

A. I said this morning I don't recall the deliveries having been improved on this model. It certainly could have happened. I still don't specifically recall.

Q. Will you note that in Paragraph 4 of Defendants' Exhibit 51 having to do with contractual provisions, reference is made to the letter agreement of the sale date covering the 120s which is Defendants' Exhibit 47. Do you note that?

A. Yes.

Q. Is it your belief that a copy of Defendants' Exhibit 51 in the normal course came to you at or about the time it was written?

A. I would certainly think so.

Mr. Hayes: I offer in evidence Defendants' ITr. 2078 Exhibit 51 for identification.

Mr. Sonnett: In light of the witness' testimony, I have no objection.

The Special Master: Received.

(Defendants' Exhibit 51 for identification, received in evidence, as of this date.)

[Tr. 2094] Q. Mr. Rummel, when did TWA first begin to fly polar routes to Europe?

A. I can't be sure, Mr. Hayes. I believe we did that first with our tip tank 1049Gs which would have been around possibly 1956, but I'm not sure.

Q. Did you use other aircraft on the polar routes as well as the 1049Gs?

A. Yes.

Q. What other craft did you use?

A. 1649As.

Q. What segments were operated over the Pole?

A. And we used the B series of jets on polar routes later on.

Q. That was the 331Bs when you acquired them or leased them in 1961 or 1962?

A. Yes.

Additionally, we had polar service for a period but not non-stop with jets.

Q. I am speaking of the non-stop polar services.

What were the segments on which the polar routes were operated?

A. West Coast terminals to London and to Paris but not simultaneously.

Q. Was the 131 a reliable airplane for use on the ITr. 2094Al polar routes non-stop?

A. Well, its schedule reliability if that's what you mean, would have been practically zero.

Q. Was the 331 a reliable plane for use on TWA's polar routes non-stop?

A. Not non-stop.

Tr. 2095] Q. The first jet that TWA acquired which was a reliable plane for non-stop polar routes was the 331B, was it not?

A. Yes.

- Q. That was a fan jet, was it not?
- A. Yes, sir.
- Q. Until the development of the 331Bs, was TWA under the necessity of operating its polar routes with piston airplanes?
- A. No, because one-stop service with jets was still much faster than non-stop piston service.
  - Q. Where would the stop be made?
- A. Well, we tooled up at Frobisher. However, that didn't finally work out too well.

Then later on the stops were made in, I believe, Montreal.

- Q. To what extent did TWA use jets on a one-stop basis over its polar routes.
- A. Well, we did this at various times and for various lengths of time.

Our published schedules listed polar services but indicated that stops—a stop would be made en route.

These were usually called fuel stops.

- Q. What jets did TWA use when it used jets on the TTr. 2096J polar routes with one stop?
  - A. I'm petty sure initially it was 331s, Mr. Hayes.
  - Q. Can you fix the time when this took place?
  - A. No, sir, I'm a little vague on the exact timing of that.
- Q. At the same time, were you also using pistons on the polar routes on a non-stop basis?
- A. I'm not sure, Mr. Hayes. The polar route was pretty thinly populated, but I don't just recall at the moment if there was overlapping or not.
- Q. At page 9 of your statement you set forth in Item No. 3 the purchase of the 30 Convair jet aircraft, and you have already testified that the agreement of June 7, 1956, was the preliminary agreement. I think that is the word.

Between the time of that preliminary agreement and the agreement that was finally made on September 10, 1956, was

there a review of the prospective purchase of the Convair 880 by TWA?

- A. Yes.
- Q. Where did that take place?
- A. Well, the final review took place in Kansas City.

[Tr. 2097] Q. Who was present at that meeting?

- A. Well, the ones I remember are Jack Weller—gee, there were seven or eight people there.
  - Q. Mostly top management?
- A. They were all in the—either top or in the higher echelons of management.
  - Q. Was Mr. Collings there?
- A. I-if he was, I don't think he was there the entire time.

The reason I say that is I recall reviewing the results with him subsequent to the meeting.

- Q. Was Mr. Cocke present?
- A. Well, that's one reason I hesitated slightly. I think he was, but I'm not sure. It could have been Clyde Fullerton who was there for him. I am not entirely sure of that.
- Q. What was the occasion for the holding of the meeting or the calling of the meeting, Mr. Rummel?
- A. The occasion was specifically to review the Convair 880 proposed order to determine whether from TWA's point of view or not it would go along with the Convair order or it would prefer an alternative.
  - Q. Who called the meeting?
  - A. I did.

ITr. 20981 Q. Was it Mr. Collings?

- A. I don't know who convened the meeting, but I called it.
- Q. Did you have any conversation with Mr. Hughes with respect to the subject of the meeting before it was called?
  - A. Yes.
  - Q. Tell us that conversation, please.

A. Well, as I recall it, Hughes asked for an expression from TWA on whether or not we shall proceed with the 30 Convair deal, and I expressed the view that the best way to do this was to meet with a number of the top people in TWA and get their views, as I recall it now.

Q. Did you report that conversation to Mr. Collings!

A. I am confident that I did, and that he was knowledgeable concerning the holding of the meeting.

What I meant when I said I called the Meeting—I wasn't sure who convened it, it was merely I attended the meeting. I'm not sure at the moment whether I flew in from the Coast or whether I was there or not, but that morning the people were there, some of whom came from New York.

I just don't remember that detail of it.

[Tr. 2099] Q. At the time of that meeting, had the June 7th preliminary agreement been entered into?

A. Well, I'm quite sure that we were approaching not the June 7th date but the September date.

Q. What I am trying to find out is whether the meeting was held between June 7th and September 10th.

A. I believe so, Mr. Hayes.

Q. What was the consensus of the meeting with respect to proceeding with the proposed Convair contract?

A. Qualified approval.

Q. Can you explain that more in detail, Mr. Rummel!

A. Well, I believe that out of the meeting came several conditions, which the group felt should be met and which really amounted to conditional approval.

Q. Was the consensus of the meeting communicated to Mr. Hughes?

A. Yes.

Q. By whom?

A. By me after Hughes was unable to get Mr. Collings.

Q. Were there then further negotiations with Convair with a view toward meeting the conditions that had been stated at the meeting?

[Tr. 2100] A. Yes. Some of the conditions were not new to the negotiation and negotiations did continue.

- Q. Did the September 10th agreement when finally executed substantially comply with the conditions that were recommended by the management group at the Kansas City meeting?
- A. I'm fairly certain now that the majority of them, but I don't believe all of them were met.
  - Q. Were there any important ones that were not met?
- A. I don't—well, I—my impression now is that the one on airplane price wasn't met, but I'm not wholly clear as to the extent of the difference.
- Q. Would it be correct to say that the final contract substantially complied with the recommendation made at the Kansas City meeting?
  - A. Well, I think so.

I might say some of the conditions were included to provide a stronger base for negotiations.

- Q. You mean for further negotiations with Convair?
- A. Well, I remember one point in particular I had been trying to get, and by making this—by giving a stronger foundation than just Rummel we finally won the point.

[Tr. 2101] Q. Bargaining condition, so to speak!

- A. That's right.
- Q. The contract was not entered into by Hughes Tool Company then until after it had received the recommendations of TWA management, is that correct?
  - A. That I think is true of the September 10th-
  - Q. That is what I mean.
  - A. —that is the final contract.
  - Q. The final contract?

A. I might—I think I should point out for accuracy that this review meeting covered broad issues and a few narrow issues that were believed to be important. Broadly, numbers of planes, broadly what the plane would do for us and that sort of thing, and that in no way was a review of contract terms or detailed review of the contract or specification.

Q. Did it consider alternative airplanes as well, the meeting!

A. It did not consider any elective available at the moment because none existed. There were no other deals or contracts that existed to the degree of maturity that this one did.

The obvious alternative could have been Electras or Boeings and I'm not sure of the degree which [Tr. 2102] those at that time were discussed.

# [Tr. 2108] • • • Examination (cont'd) by Mr. Hayes:

Q. Mr. Rummel, what discussion, if any, was there at the Kansas City meeting as to which you were testifying yesterday afternoon with respect to the number of Convairs to be acquired?

A. Well, the number 30 was discussed, Delta's 10 was discussed, and the current views on numbers of planes, that is the 880s that might be sold to other airlines in a reasonable period was discussed in connection with the rebate provision of the contract.

Tr. 21091 Q. What was the substance of the discussion as to the propriety of ordering 30 Convairs for TWA's use?

- A. Referring to the meeting?
- Q. Yes.
- A. In Kansas City?
- Q. That's right.

- A. Incidentally, whenever you like, I have that one date that was asked yesterday.
- Q. Fine. Why don't you interrupt? What date was that? I have forgotten.
  - A. Perhaps I shouldn't have, Mr. Hayes.
  - Q. No, I am glad you did.
- A. You requested to know the inaugural date of TWA jet service on the New York-Los Angeles segment. That date is April 23, 1959.
  - Q. April 23rd?
  - A. 1959.
- Q. Thank you, sir. Do you remember the question? The question was what discussion there was at the Kansas City meeting with respect to the propriety of ordering 30 Convairs for TWA's use?
- A. Well, the—I don't recall questions in terms of propriety. 30 was the number compatible with earlier indications from TWA as to the need for airplanes in this—

Tr. 21101 Q. I am sorry. I missed something there.

- A. Was compatible with earlier indications from TWA that I testified to before for airplanes in this category.
  - Q. On this cross-examination you testified to that?
  - A. Yes, sir.
  - Q. Did you! I do not recall it. Go ahead.
  - A. I did.
  - Q. I will accept your recollection.
- A. The principal discussion, as I recall it at this time, related to the probability of actually receiving rebates on the airplane price from Convair.

The basic question of 30 vs. some other number for TWA, as I recall it now, was behind us, and at the same time the proposition, as I indicated yesterday, was put be-

fore them, basically was should we go ahead with Convair or not.

- Q. The number that was put before them was 30! That's what they were discussing; is that right?
  - A. For TWA.
  - Q. For TWA?
  - A. Yes.
- Q. You said the number 30 was behind you at that time. [Tr. 2111] Had there been any recommendation from any department of TWA that 30 be acquired?
- A. Well, I indicated previously, Mr. Hayes, that I had been in touch with Traffic on that point considerably earlier, and 30 is the number that I recall our having come into agreement on.
  - Q. Traffic, that would be Mr. Fellows, would it not?
- A. Well, I believe Fellows was the spokesman on the point at that time, if I recall correctly, but I don't think he acted completely in isolation.
- Q. No I am not suggesting that. That was his division, though, when you say "Traffic", was it not?
- A. Well, it was Cocke's division and Fellows worked for Cocke, as I recall it.
- Q. Is it correct to state, then, that prior to the Kansas City meeting there was agreement, at least, between Fellows and Cocke that 30 would be a good number or the right number for TWA to order, if they bought any, of course!
- A. I am not sure I would put it wholly that way, because I have the impression that Cocke would have been happy to have still more.
  - Q. But he was agreeable to the 30?
  - A. I believe that is a fair statement.
- [Tr. 2112] Q. You mentioned that the chief subject of discussion at the meeting was operation of the rebate clause.

Speaking broadly, was the rebate clause one whereby the prices of the planes, of the 30, would be reduced as more planes were sold by Convair to other airlines, without going into details?

- A. I didn't intend to say, Mr. Hayes, that it was the chief subject for discussion at the meeting.
  - Q. Maybe I misunderstood you.
- A. What I intend to convey was with respect to the numbers of airplanes, the discussion evolved around this issue.
- Q. With that understanding, was my description broadly of the rebate clause as proposed by Convair an accurate one?
- A. Could that be read? I don't remember discussing the content of the rebate clause.
  - Q. I did not say that you did, Mr. Rummel.

I stated the substance of it and I ask you, as an accurate, broad statement of the substance of the rebate clause, as you remember it, that there would be a reduction in the price of the 30 planes determined by additional sales by Convair of planes in excess of 40, without going into the details of the reduction.

Tr. 2113 A. That is broadly true, at least, for certain numbers in excess of.

Q. That is what I say. I was not going into the details at all or attempting to do so.

It was a stepped up schedule, was it not, Mr. Rummel? For sales between X and Y numbers, the rebate would be so much on the original 30? For sales between Y and Z numbers, there would be a further rebate on the original 30? Is that the way, broadly, the rebate clause proposed would operate?

A. It is an over-simplification, but there were categories of rebates.

- Q. Were they geared into the number of planes that would be ordered by others from Convair?
  - A. No.
  - Q. They were not. What were they geared into, then
  - A. Airplanes that were delivered.
- Q. Of course, when I said "ordered," I meant ordered and delivered. Pardon my inaccuracy of expression, Mr. Rummel. Planes that would be delivered to other airlines.
- A. They were specifically tied to deliveries, actual deliveries pursuant to sales.
  - Q. Correct.

[Tr. 2114] A. There was some question of short-term leases, for example.

- Q. You mean short-term leases were excluded from the rebate provision, or were they not?
  - A. They were excluded.
- Q. At this Kansas City meeting, and by the time of the Kansas City meeting, was it expected that Delta would order 10 planes?
  - A. Yes.
- Q. What was the substance of the conversation at the Kansas City meeting as to the expectation that other airlines would order 880s and in what quantities?
- A. Well, I think views varied somewhat between people on that point, and I don't remember the specifics now. I think that at that time it was anticipated that Pan American would order a number of them and possibly some other airlines. I am a little vague now.
  - Q. You cannot remember the other airlines!
- A. Well, numbers of airlines were discussed. I am trying to draw conclusions. That's where I am vague right now.

Q. Do you remember any of the other airlines which were discussed?

A. Were discussed?

[Tr. 2115] Q. Yes.

A. Oh, yes, we talked about the possibilities of United, I believe Capitol Airlines. I am not sure now.

Q. Have you any recollection as to the discussion with respect to the numbers that were expected to be ordered by other airlines, either individually or in total?

A. I don't, Mr. Hayes.

Q. You have no recollection of the numbers at all?

A. Well, I recall there were numbers, but I don't recall what they were now.

Q. You cannot recall? Even the total numbers that were discussed for all airlines as a possibility?

A. Well, I may not have been clear. What we were discussing, as I recall it, was the probability of sales, not the broad possibilities that were available to Convair. But I don't remember the specifics.

Q. You do not remember the numbers that were considered probable sales by Convair?

A. No, not right now.

Q. Can you remember whether or not that the number that it was expected Convair might sell to other airlines would be sufficient to bring about the operation of the rebate provision?

A. Yes.

ITr. 2116] Q. It was hoped that there would be sufficient orders so that the rebate provision would operate; is that it!

A. Well, yes, any additional orders beyond the 40 operated the rebate provision.

- Q. Yesterday, you gave some testimony, Mr. Rummel, as to a conversation you had with Mr. Connelly of Boeing with respect to deliveries of airplanes in connection with your attempts to improve the deliveries, do you recall that?
  - A. Yes.
- Q. Did you have a record made of a conversation between you and Mr. Connelly which took place on December 20th or some date in December 1957?
  - A. I don't remember.
- Q. Do you remember a conversation with him at or about that time?
- A. Not specifically. I had conversations with him from time to time.
- Q. Was there any occasion when you had a record made by any means whatsoever of a conversation between Mr. Connelly and you?
- A. Well, if you mean was the conversation bugged, no, not as far as I have ever known.

[Tr. 2117] I did have a Dictaphone—

- Q. You did have a what?
- A. A Dictaphone and it was possible to record conversations, but I certainly don't recall ever having done so without making it clear to the other people that I was, but I don't know if I did or not in this case.

# [Tr. 2121] • • • By Mr. Hayes:

- Q. I honestly don't remember whether this is in the testimony before the recess or not. I think it was. I looked for it and couldn't find it easily: that Convair had made it clear it would not proceed with the 880 program, unless it had at least orders for 40 aircraft?
- A. I don't remember if that was in the testimony prior to the recess or not, either.

- Q. Was that a fact?
- A. Yes.
- Q. I couldn't remember whether or not it was in your deposition.

Mr. Sonnett: At the bottom of page 13 of Mr. Rummel's prepared statement—

Mr. Hayes: That is where I read it. I knew I read it some place. I never thought of looking at his prepared statement.

The Special Master: I remember the figures.

Mr. Sonnett: "Convair was unwilling to undertake the program until it had firm commitments [Tr. 2122] for the purchase of 40 aircraft."

Mr. Hayes: My recollection was it was in his prior testimony and I searched and couldn't find it.

# By Mr. Hayes:

- Q. At the time that you were advised of a reduction in Convair's from 30 to 20 and you told us about your conversations with Mr. Schwartz at that time at, I believe, the Waldorf Hotel, was any mention also made of any reduction in the number of Boeings?
  - A. Yes, I think that was discussed at that same time.
- Q. What was said in that connection as to the Boeing reduction?
- A. Well, I can't be—the gist of it was that there would be a reduction in the Boeing fleet, and I believe Leonard discussed his views. He thought on the one hand we had committed for too many airplanes, and, secondly, of the problems in funding the purchase.
- Q. Did he mention both of those considerations in connection with both the Convairs and the Boeings?

A. Well, I don't know that I remember quite that—that specifically. It was discussed during the course of the meeting.

ITr. 2123 Q. Was anything said by him in that conversation as to the efforts of either TWA or Hughes Tool Company to obtain financing?

A. Well, I am pretty sure it was in that meeting that he mentioned—it could have been at a different meeting—I think it was that—he mentioned he had been in touch with the First Boston, but I don't—I don't recall that, the detailed discussion, although I guess that might have occurred.

I don't recall any detailed discussion on the financing particularities.

Q. Were you conscious of the need for financing in order for TWA to acquire jets?

Mr. Sonnett: I must at this point object. This has been gone into at some detail, commencing at 759 of the cross-examination, this entire meeting and conversation, and these subjects.

Mr. Hayes: I am not speaking of the meeting now at all.

The Special Master: Off the record.

(Discussion off the record.)

[Tr. 2124] The Special Master: On the record.

- Q. Were you acquainted throughout the period from late 1955 to the end of 1960 with TWA's financial condition?
- A. Certainly not in great depth. I was generally familiar with how we were doing.
  - Q. Did you receive copies of TWA's annual reports?
  - A. Certainly.
- Q. Were you acquainted with the balance sheet condition of TWA throughout that period?

A. Well, as I say, I was generally familiar with the financial results during that period.

Q. By financial results, are you talking about the profit and loss results at the end of the year or are you also including the financial condition as reflected by the balance sheets?

A. I thought you were talking about the balance sheets.

Q. You were also acquainted with the profit and loss results for each year, were you not?

A. Well, I read the annual reports, Mr. Hayes, and I received some other data through the years just in my normal capacity in the company.

Q. Do you know what plans, if any, were originally intended for the financing of the jets ordered by TWA?

[Tr. 2125] A. No.

Q. You were not consulted in that connection at all by anybody?

A. Financing?

Q. Yes.

A. No.

The only consultation was simply putting forward to both the Tool Company and to TWA the information I had on the cash—or on the capital requirements.

Q. Your function ceased at that point?

A. I had no part of financing.

Q. Was there at any time an intention to have the jets acquired originally by the Tool Company and sold on conditional sale to TWA?

Mr. Sonnett: Intention on whose part?
Mr. Hayes: Could I have the question?
(The question was read.)

Q. An intention on either the part of Toolco so far as you know or on the part of TWA so far as you know?

A. I don't know Mr. Hayes.

- Q. You never heard of that?
- A. Well, I don't recall ever having heard of it.
- Q. Did you ever hear in 1959, in the spring of 1959 of a plan for Toolco to purchase the planes and to [Tr. 2126] lease them to TWA?
- A. Yes, I heard of the plans for interim leases of the jets.
  - Q. What do you mean by interim leases of the jets?
- A. Well, I think my understanding at the time was arrangements might be made to lease the jets for TWA's use on a short term basis until such time as the financial problem was squared away.
- Q. Are you speaking now of the leases that were entered into with respect to the Boeings which were delivered and were day to day leases?
  - A. That's what I had in mind.
  - Q. No. Aside from those leases-
  - A. Aside from those?
- Q. Yes—did you ever hear of a plan whereby the Tool Company would acquire the planes and then lease them to TWA?
- A. Well, I recall Convair proposing that sort of thing in order to get the 880 log jam moving.
  - Q. That was in 1960, was it not?
- A. Yes, I guess that would be after the date you mentioned. I am sorry.
  - Q. I am speaking of 1959.
  - A. I don't remember that, Mr. Hayes.
- [Tr. 2127] Q. Have you any recollection of such a leasing plan as I describe being proposed by Dillon, Read & Company?
  - A. No.
  - Q. You do not?
  - A. No.

- Q. That never came to your attention?
- A. Not-no, I don't remember anything from Dillon, Read coming to me.
- Q. Whether it came from Dillon, Read Company to you or from other officers of TWA to you—
- A. No, I wasn't drawing that distinction. I don't recall having been involved.
- Q. Did you ever acquire any knowledge about a plan for financing of the jets by TWA directly through insurance and bank lenders which plan was proposed by Dillon, Read & Company?
- A. I don't remember anything like that, Mr. Hayes.

  The financing was not my area of activity in the corpora-
- Q. None of the matters I mentioned to you click with your memory at all?
  - A. No, not as I sit here.

ITr. 2135] • • • Q. In your prepared statement, Mr. Rummel, at page 9, you mention that TWA received 12 of the 331s, and that the remaining six 331s were diverted to Pan American.

Do you see the portion I am referring to?

A. Yes.

tion.

Q. It is my recollection that you have already testified, and correct me if I am wrong, that you had a conversation with Mr. Thomas concerning the reduction from 18 to 12.

The Special Master: Do you recall?

- A. I'm not sure as to just what was in the earlier testimony at the point at the moment.
- Q. I am not either and I just did not have a chance to check it, Mr. Rummel.

What recollection, if any, do you have as to any ITr. 21361 conversations with Mr. Thomas with respect to a reduction of 331s from 18 to 12?

A. Well, I met with Thomas—I am not sure exactly when it was—and perhaps more than one time.

I have the impression that it was after the plans to dispose of these ships was well along, but I believe that there was a discussion on the point.

# Tr. 21421 • • • By Mr. Hayes:

- Q. I suppose you have forgotten the question by ITr. 21431 now, Mr. Rummel?
  - A. I've forgotten the precise wording.
  - Q. I have forgotten it, too.

I will try it again.

What I was trying to elicit from you was the conversations you had with Mr. Thomas concerning a reduction from eighteen to twelve 331s.

A. Well, I recall an expression of attitude I would say on Mr. Thomas' part with respect to the reductions and in fleet numbers. I am having trouble at the moment trying to distinguish from memory between the Convairs and the Boeings.

But I remember Thomas at one point, and I am not sure exactly when this occurred, expressing the view with which I did not agree, that during the next few years, subsequent to this particular time, it would become clear that airlines generally had over-bought on jets, and that TWA or Hughes would be able to pick up jets from those who had over-bought at bargain prices.

One other—at one point in time he urged that we start moving vigorously into the development of smaller jets, that is, that then existed.

I believe this may not have been in exactly the same conversation, but I'm not entirely certain.

[Tr. 2144] And I think additionally, he expressed the view at one of the meetings that he was satisfied with or concurred with—I don't remember the words—with the idea of 20 Convairs.

The problem I'm having is to try to specifically recall any specifics at the moment on Thomas of the 18 to the 12, but I think these discussions occurred during the period that this was in issue.

Mr. Sonnett: I would like, Mr. Brownell, to be able to ask the witness one or two questions on the voir dire to lay a foundation for a motion to strike the answer.

Mr. Hayes: Mr. Brownell, I must object to these constant interruptions on so-called voir dire.

There is going to be a redirect. There is no reason at all that I can see why Mr. Sonnett cannot hold his questions until we are on redirect instead of interrupting my effort to present a picture here of what happened.

Mr. Sonnett: Your efforts-

The Special Master: Let us hear the first question and we can test that out.

# Voir Dire Examination by Mr. Sonnett:

Tr. 21451 Q. Is it your understanding that Mr. Thomas had any authority to act for TWA for an acquisition of jet aircraft?

Mr. Hayes: I object.

The Special Master: I will sustain the objection.

Mr. Sonnett: It seems to me the record is already clear that Mr. Thomas had no such authority.

The Special Master: I recall the record.

Mr. Sonnett: If that is so then Mr. Thomas' statements to this witness particularly after the event of this are pure hearsay and not binding in any sense on TWA.

Mr. Hayes: I am not going to argue the point now, Mr. Brownell.

The Special Master: I, of course, cannot decide at the present time as to the weight to be given to the answers on this line of questioning. In view of the fact that the former Master was not able to find this particular allegation to be a fact it would be helpful to me to have the subject matter probed a little further, leaving, of course, a later decision whether or not it meets the test [Tr. 2146] prescribed by Judge Metzner.

Mr. Sonnett: What I was attempting to raise—I realize the evaluation as to the weight of all of this you will have to make when the record is complete—but what I was attempting to raise is the point that Thomas' statements in respect to jet aircraft could not be on the state of this record admissible against TWA because by definition he had no authority to act for TWA in that field.

The Special Master: I believe any questioning along that line should come as a matter of redirect rather than interrupt the orderly procedure of the cross examination.

Mr. Sonnett: All right, sir.

Mr. Hayes: And I think I am safe in assuming that the Special Master is not accepting Mr. Son-

nett's statements as sheer legal gospel, even if I do not answer them at this point.

Mr. Sonnett: My recollection is-

The Special Master: I am persuaded heavily by both of you expert counsel, not more one than the other, I will put it that way.

Mr. Sonnett: My recollection is and this is what I premised my objection on, that there is [Tr. 2147] evidence in the record that both Hughes and Thomas both agreed in statements to this witness that Thomas had no such authority.

Mr. Hayes: Your recollection happens to be inaccurate, Mr. Sonnett.

Mr. Sonnett: I am not at all content to accept that. I am quite sure the record is clear.

The Special Master: Let us proceed with the cross examination.

Mr. Hayes: Yes, let's proceed. I would much rather get along with the cross.

# By Mr. Hayes:

Q. In conversations with Mr. Thomas with respect to reductions of numbers of aircraft, did he ever say anything to you about the wisdom of waiting for improved designs?

Mr. Sonnett: Just to save interruption may I note a continuing objection to all conversations with Thomas on this point?

The Special Master: Surely.

A. I belive he did mention that possibly better planes would be available later during some of these conversations. And I am pretty sure I put that in the record earlier, if I am not mistaken. Maybe not.

[Tr. 2148] Q. The fan jet development took place prior to the time of the reduction in the number of planes that TWA was to receive, did it not? Specifically didn't it take place in 1958 with the American Airlines order for 990s from Convair?

A. The 990 always had a fan engine. That's one of the things that distinguished it from the earlier series.

Q. The development of the fan engine took place before your conversations with Mr. Thomas which you have just related, did it not?

A. Well, I think so, yes.

Q. Did Mr. Thomas ever say anything to you specifically with respect to assigning the right to purchase six 331s to Pan American?

# Mr. Sonnett: Could I have that question read? (The question was read.)

A. He may have. I don't remember what it was if he did.

Q. Did he ever tell you that he was in favor of a reduction from 18 to 12 or of an assignment of the right to acquire six 331s to Pan American?

A. I don't remember a specific statement to that [Tr. 2149] effect. I have the impression he was delighted to be able to move forward with the 12.

Q. You have in previous testimony told us about the constitution of the Jet Planning Staff and members of it and its functions and so on, and of the protests you made to sundry people with respect to the proposed reductions.

A. Yes.

Q. Did you ever bring up the subject of the proposed reductions in the fleet at any meeting of the Jet Planning Staff?

When I say the subject, I mean your protest against the reduction.

A. Well, I was protesting to those whom I thought the protest might have some effect.

I don't remember protesting to the Jet Planning Staff, if that's what your—

- Q. That is what I am asking.
- A. I don't recall-
- Q. You have no recollection having done that?
- A. No, I don't recall protesting at a Jet Planning Staff meeting, although certain—certainly program changes were discussed and I wouldn't want to say conclusively whether I did or I didn't. I don't remember right now.

[Tr. 2203] • • • The Special Master: So that you do not have any massive documentary material that you think necessary to put in with respect to the merger!

Mr. Hayes: No. If the Huntington report goes in, I think it takes care of the whole study.

The Special Master: Have you anything further to say, Mr. Sonnett?

Mr. Sonnett: I think you, Mr. Brownell, have put your finger on the heart of the problem. I have nothing to add to it.

The fact that a merger was proposed was certainly known to TWA. The fact that the proposed merger which Hughes wanted to bring about was considered by the captive board was known to TWA. The fact that the merger was never consummated is, indeed, not in dispute.

Even if this were a default in a stockholders suit and this is not a stockholders suit—this line of evidence would be irrelevant, it seems to me.

The Special Master: I understand the respective positions now, and I believe it will shorten the record in the long run if we allow this [Tr. 2204] to go in.

I hope that the line of inquiry will be relatively brief, because I do have my doubts as to the relevance of any detailed information about the merger.

Mr. Hayes: I am not going to ask anything about the merger.

The Special Master: Received.

(Defendants' Exhibit 57 for identification marked in evidence as of this date.)

Mr. Hayes: Will it be conceded, just to save introducing a bunch of directors minutes, that the merger was proposed to the directors, I think it was in May 1960, and for several meetings thereafter the directors merely postponed final action?

Mr. Sonnett: I take it along with the concession that there is nothing that indicates that TWA ever agreed to not getting these six planes, with the further understanding that there is nothing to indicate that this document, Exhibit 57, was any more than a draft, and I don't know whether it was ever considered by the board or not. Certainly it was never adopted by TWA. I would take counsel's representation that that is what the minutes would ITr. 22051 show if they were introduced.

Mr. Hayes: I can't make the first concession. You are asking me to undercut my whole position. That, I don't intend to do.

Mr. Sonnett: No. I mean aside from your argument, which I understand, but in terms of specific reference, if you contend that there is something in

the TWA minutes showing expressly a consent to not getting these six planes, even though the board was a captive board, I would suppose that you would want to put that in evidence before the Special Master for whatever it is worth.

The Special Master: You don't claim that is in the minutes, do you?

Mr. Hayes: I don't claim there is any mention in the minutes of the planes or anything else.

The Special Master: Would this requirement of Mr. Sonnett satisfy your desire for a statement with respect to the minutes?

I ask you, Mr. Hayes.

Mr. Hayes: I am sorry. I thought you were asking Mr. Sonnett.

The Special Master: No. That reply from ITr. 22061 Mr. Sonnett is sufficient to allow you to go ahead without introducing the minutes?

Mr. Hayes: It being understood that the minutes do disclose that the merger was brought to the attention of the board of directors, but that there is no specific reference in the minutes to six planes or any other number of planes.

The Special Master: You do understand that, Mr. Sonnett?

Mr. Sonnett: Oh, yes.

The Special Master: All right, let us proceed.

# Examination (cont'd) by Mr. Hayes:

Q. For some period of time in 1961, TWA continued to give consideration to the proposed Northeast merger, did it not, Mr. Rummel?

A. I believe that is correct, yes.

Q. Did you have any connection with the consideration given by TWA to the Northeast merger in 1961, after the new management came in?

A. I am pretty sure I discussed certain aspects of it with Mr. Tillinghast, possibly others, some time during 1961. I don't recall exactly the time.

[Tr. 2207] Q. Did you prepare any studies in 1961 concerning the proposed merger with Northeast?

A. Mr. Hayes, I can't say for sure.

My department did become involved in projections relating to that consideration from time to time, and I—as I sit here now I think it is likely that we did some work in 1961, but I don't recall the specifics at the moment.

Mr. Hayes: There was marked for identification on Mr. Rummel's cross-examination when Mr. Leisure was conducting it as Defendants' Exhibit 30, the minutes of the TWA board of March 20, 1961.

I now offer those minutes in evidence, particularly because of the report on the proposed Northeast Airlines merger which appears on page 8.

The Special Master: I think the way we were doing that before was to copy in the—

Mr. Hayes: Reading in-

The Special Master: -relevant portions.

Mr. Hayes: Fine. Why don't I just read it in!

Mr. Sonnett: May I look at it for a minute to see whether or not I have any objections? What page is it on?

(Tr. 2208) Mr. Hayes: Page 8.

Mr. Sonnett: I think it is irrelevant for the reasons previously stated.

Mr. Hayes: Do you want to look at it, Mr. Brownell? Have you a copy in front of you.

The Special Master: Yes.

As I understood you a little while ago your statement was going to be accepted by Mr. Sonnett in lieu of introducing the minutes.

Mr. Hayes: That was in 1960, that part.

I might mention, Mr. Brownell, the only reason I am going into this is because on Friday I asked Mr. Sonnett if he was basing no claim on Paragraph 47 of the complaint, and I did not get an affirmative answer.

The Special Master: I recall that.

Just mark this subdivision of the minutes and the reporter can copy it in.

Mr. Hayes: You have a copy before you, do you, Mr. Brownell?

The Special Master: Yes.

Mr. Hayes: It begins with "Report on the proposed Northeast Airlines Merger" and goes down to the word "consulting firm."

ITr. 22091 Mr. Sonnett: If you are going to do that, take in the following two paragraphs one of which says Mr. Holliday abstained from voting.

The Special Master: Yes, put in that whole report.

Mr. Hayes: I see, the balance of the page. I looked at the next one that somebody returned to the meeting and I didn't think that was important.

Mr. Sonnett: It does indicate that Mr. Holliday was aware of the conflict of interest on the subject matter. If it is going in at all I think the whole thing ought to go it.

Mr. Hayes: Can we defer argument until time for briefs?

The Special Master: I was going to give you equal time.

Mr. Hayes: No, I don't want equal time now. I would like to finish the cross-examination without the benefit of wise cracks from counsel.

Mr. Sonnett: It is perfectly evident why he abstained.

("Report on the Proposed Northeast Airlines Merger.

"Mr. Albert V. Leslie recommended on behalf [Tr. 2210] of the Management Committee that final action on the matter of the proposed Northeast Airlines merger be deferred until there had been an objective review of the merits of the proposal by independent experts. He advised that the present merger offer from Northeast Airlines would expire March 31, 1961.

"After discussion, upon motion duly made, seconded and carried, it was

"RESOLVED, that the proper officers of this Corporation be, and they hereby are, authorized to request an extension of three months from Northeast Airlines of its merger proposal, and that the proper officers of the Corporation be, and they hereby are, authorized to engage a recognized consulting firm to assess the results of the proposed merger on the Corporation's operations and earnings, and to advise what terms, if any, would form a reasonable basis for a merger in light of the facts developed by said consulting firm.

"At this point, Messrs. Oscar Holcombe and Loyd Wright returned to the meeting.

"Following the meeting, on March 21, 1961, Mr. Raymond M. Holliday, advised the Secretary that

[Tr. 2211] he had abstained from voting on the above resolution.")

Mr. Hayes: Would you please mark for identification as Defendants' Exhibit 58 a copy of a letter dated July 6, 1961 on the letterhead of Chadbourne, Parks, Whiteside & Wolff to the Examiner, Walter W. Bryan of the Civil Aeronautics Board in the New York-Florida Renewal Case Docket No. 11285.

The Special Master: Have you read it, Mr. Rummel?

The Witness: I just read it, yes. I don't recall having seen it before.

## By Mr. Hayes:

Q. Mr. Crimmins was a partner in the Chadbourne, Parks firm, was he not, Mr. Rummel, at that time?

A. I don't know.

Mr. Hayes: This exhibit was identified as having been sent by TWA or on TWA's behalf to the Civil Aeronautics Board during the deposition of [Tr. 2212] Mr. Tillinghast in this case.

I offer it in evidence.

Mr. Sonnett: Objection. Irrelevant as to any issue before the Special Master.

Mr. Hayes: If you withdraw Paragraph 47 I will withdraw the offer.

Mr. Sonnett: I stand on my objection.

The Special Master: In itself I certainly don't see the relevance. Maybe future developments will show the relevance.

Are you leading up as a statement of the final action as to-

Mr. Hayes: I will bring in final action eventually, yes.

The Special Master: I will allow it.

(Defendants' Exhibit 58 for identification received in evidence as of this date.)

Mr. Hayes: I ask that there be marked for identification, a document entitled "Preliminary Appraisal of Merger Possibilities for TWA Management Policy Committee" dated May 9, 1961.

[Tr. 2213] Mr. Hayes: This I might mention was also identified by Mr. Tillinghast in the course of his deposition.

Mr. Sonnett: As what?

Mr. Hayes: A study that had been made. That's what it purports to be.

Mr. Sonnett: It purports to be a preliminary appraisal of merger possibilities of TWA management policy committee which has a note at the top of it "Hold for next Policy Committee meeting," as I read it.

Mr. Hayes: That is correct. You read very so curately.

Mr. Sonnett: If we both did we would finish a lot sooner.

Q. Did your department, Mr. Rummel, prepare Defendants' Exhibit 59 for identification? It is headed "Trans World Airlines Planning and Research."

A. I believe so.

Mr. Hayes: I offer it in evidence.

Mr. Sonnett: Irrelevant to any issue before the Special Master.

The Special Master: Received.

(Defendants' Exhibit 59 for iden-[Tr. 2214] tification received in evidence as of this date.)

Mr. Hayes: I ask that there be marked as Defendants' Exhibit 60 for identification a memorandum from Henry D. Fellows to D. W. Kittelberger, dated July 11, 1961, on the subject of a meeting of July 10, 1961, Northeast.

Q. Who is Kittelberger, Mr. Rummel? I don't think he has been identified.

A. Mr. Kittelberger at one time worked for Mr. Fellows. I don't recall his exact title now.

Mr. Hayes: I might mention that this exhibit was also identified on the deposition of Mr. Tillinghast, and I believe Mr. Rummel also identified it. He was present at the meeting covered.

The Special Master: Have you read it, Mr. Rum-mel?

The Witness: Yes, sir, I read it.

Q. You were present at the meeting referred to in Defendants' Exhibit 60 for identification, were you not?

A. The letter says I was, Mr. Hayes, but I don't ITr. 2215] recall the meeting.

Q. You do not recall it as you sit here?

A. No, I don't.

Mr. Hayes: I offer in evidence Exhibit 60 for identification.

Mr. Sonnett: Same objection. The Special Master: Received.

(Defendants' Exhibit 60 for identification received in evidence as of this date.)

- Q. Do you recall when it was finally determined not to proceed with the Northeast merger?
  - A. No.
  - Q. Was it in the latter part of 1961?
  - A. I don't know.
  - Q. You have no recollection at all as to time?
  - A. No.
- Q. Were you consulted with respect to the decision not to proceed with the Northeast merger?

Mr. Sonnett: I have a problem. I don't want to go beyond what I think is essential to make the point clear.

I am sure Mr. Hayes must be aware but if he isn't, there were a great many efforts following the filing of this case on June 30, 1961, for its [Tr. 2216] disposition other than in court, in the course of which various proposals were made relating to Northeast by the defendants.

I don't assume that he is now seeking to get into an area of any participation the witness may have had in that connection. I think the record is perfectly clear that there never was an agreement on a Northeast merger with TWA. So, how far he can go on post-filing discussions of Northeast without getting into other subjects I think I better flag it now so that inadvertently we don't get into a situation requiring disclosure of settlement discussions.

Mr. Hayes: That is a very interesting speech indeed, wholly improper. I had always learned, and I

still believe that references to settlement discussions of any kind are not admissible on a trial of an action or a damage proceeding.

Mr. Sonnett: That is correct.

Mr. Hayes: I have asked no question relating to settlement discussions. I object to Mr. Sonnett's action in dragging in settlement discussions. I am sure I do not have to ask you to disregard his comment as wholly improper.

[Tr. 2217] Mr. Sonnett: Will the reporter read the pending question?

Mr. Hayes: When, as and if I ask a question concerning any settlement negotiations, it will be ample time for Mr. Sonnett to make an objection. I promise you I will ask no such question.

Mr. Sonnett: If the reporter will read the pending question we have a problem.

The Special Master: Maybe the best disposition is to strike all this on the record if it is agreeable to both of you.

[Tr. 2235] Q. Fine. Thank you. Does it indicate that it was presented by the Hughes Tool Company or does it indicate who presented it to the CAB?

A. Well, what it says, Mr. Hayes, is on page 1009, the paper that I recall in May was a paper that Hughes Tool put to the CAB, possibly in combination with TWA, I wasn't a direct party to that, but obtained some sort of CAB clearance, as I recall it.

Q. Do you recall now, referring to TWA Exhibit R-5, that CAB approval of the agreement was obtained?

Mr. Sonnett: I object to the form of the question. It calls for a legal conclusion as to which there is

extensive history in this case as to the effect and meaning of the CAB orders with respect to these transactions. The orders speak for themselves.

Mr. Hayes: I am not asking for the effect at all. I am asking whether or not he recalls an act taking place without any discussion of the legal effect.

Mr. Sonnett: You are calling for an interpretation of a CAB order by this witness. He is not competent to give it.

The Special Master: Do you recall that [Tr. 2236] the CAB took some action with respect to it?

The Witness: I don't recall the specifics, Mr. Brownell.

The Special Master: Do you know whether they took some action?

The Witness: Well, I think they did, but I don't recall at the moment exactly what it was.

# By Mr. Hayes:

Q. Is it part of your recollection that the CAB disapproved TWA Exhibit R-5?

Mr. Sonnett: I object to the question on the ground it is argumentative. The CAB order speaks for itself. Its legal effect has been a matter of extensive writing by the Courts in this case.

The Special Master: Overruled.

A. No.

Q. Eventually, it did come to your knowledge, did it not, Mr. Rummel, that the Hughes Tool Company ordered some 990s from Convair?

A. Yes.

Q. When was that?

A. I am not entirely sure, Mr. Hayes.

[Tr. 2237] Q. Let me see if I can help you.

Was it in late 1960?

- A. Well, I knew about it late in 1960, but believe I knew about it first before then.
  - Q. How long before late 1960?
  - A. That's what I am not sure of.
  - Q. Was it in 1960?
- A. My impression is that it was during 1960 or possibly late 1959, but I think it is more likely that it was in 1960.
- Q. Did there come a time when you had copies of the Toolco contracts with Convair for the 990s?
  - A. I don't recall having seen them.
- Q. My last question was not limited to 1960. You may have so interpreted it.

Did there come a time after 1960 when you saw copies of the Toolco agreements with Convair?

- A. I may have, Mr. Hayes. I don't recall.
- Q. You have no recollection at all?
- A. No, it is not clear.
- Q. At the time you learned that an agreement had been made between the Tool Company and Convair for 990s, did you also learn to what configuration the planes were to be built?

[Tr. 2238] A. No, I don't think I knew that immediately.
I did later.

- Q. Still in 1960?
- A. Oh, yes.
- Q. To what configuration were they to be built according to the contract?
- A. Well, can't—I can tell you what Hughes told me and I assume that's what was in the contract.
  - Q. Go ahead.

- A. Hughes indicated they were to be built to American Airlines specifications.
  - Q. What did you respond to Mr. Hughes?
- A. I argued with him along the line that if they were to be used at some point in time by TWA, and that certainly wasn't clear to me then, that in that event he should permit us to negotiate specifications and configure them to TWA's needs.
- Q. What configuration particularly did you have in mind?
- A. Well, I was referring to the detailed design configuration of the planes to make them as nearly identical to the 880s as the basic designs of the airplanes would permit.

For instance, the American Airlines' cockpit [Tr. 2239] was known to be different than TWA's 880 cockpit. There were other items of known differences which would have adversely affected operating costs if the changes were permitted to remain in the plane. And it as these kinds of things that I was talking about.

- Q. What was there outside of the cockpit configuration!
- A. I'm not entirely sure now, Mr. Hayes. I think autopilot was one. Numbers of accessories were different. Wheels come into mind. I'm not sure of that.

I'm just not entirely clear now. There were quite a few such items that we believed should be examined in detail and a determination made on what should be done.

- Q. By the way, American Airlines is still running the 990s, is it not?
  - A. Part of them.
  - Q. What part of them?
  - A. Well, first, they didn't receive the full order. Secondly—

Q. There was an agreement between them them and Convair reducing the order, was there not?

[Tr. 2240] A. The airplane didn't meet its specs and there was some sort of agreement negotiated between them to modify a certain number of those initially ordered to bring them closer—into closer agreement with the original specs.

And of those that were delivered, they later planned the disposal of them, and I believe a number have now been disposed of and if memory serves me correctly they are now operating 16 and plan to dispose of them too.

Q. They are now operating 16 out of-

A. That's what I think. I can't state that as an absolute fact, Mr. Hayes. I haven't checked it recently, but that's my impression.

Q. How many 990s did you learn the Tool Company ordered?

A. As I recall it, the orders—as I recall it, there were several orders, or there was one order that was amended and changed. I'm not certain of that.

I believe that Ray Holliday indicated—I am not real sure of this. I think it was initially six. I think it grew to nine and possibly to thirteen, but I'm not entirely sure of the numbers.

[Tr. 2246] Q. How about the cockpit configuration, is that normally installed before the airframe is finished?

A. Frequently parts of the systems are installed before the airframe is finished. Sometimes they are installed, removed, reinstalled and so on.

Q. But there has to be a cockpit before you can configure a cockpit, I would guess, am I right or not?

A. Well, you wouldn't install something that doesn't

Q. That is what I was assuming.

A. Certainly you would expect a basic airframe to have been well along. However, frequently components are built up as subs and either installed or checked out in a structure before the structure itself is completed. This is a normal thing to anticipate and it happens in varying degrees, depending on the design and the approach taken by the manufacturer.

Q. Take cockpit configuration—take, for example, Convair and the 990.

Have you any knowledge as to how long after Convair received the first go-ahead to build 990s the cockpit configuration was installed?

A. No.

Q. Would it be a matter of years?

[Tr. 2247] A. I don't know what happened in that particular case.

Q. Would it normally be a matter of years?

A. The 990 wasn't a normal situation. It was a derivative design of the 880.

Q. I understand that.

A. Well, maybe I should say it depends on what you mean by normal, Mr. Hayes.

Q. Take the Boeings. You are well acquainted with their manufacture.

How long after the go-head was given for the manufacture of the 120s was the cockpit configuration installed in any airframe?

A. I am thinking categorically. Probably a few months. I am not real sure.

Q. A few months after the original was ordered?

A. Sure.

I perhaps should explain that what Boeing did was installairline panels in their Model 80, their early prototype.

I think what you meant was a little different than that, but I was trying to answer it categorically.

Q. I would like a categorical answer. But the airframe didn't even exist within a few months, did it?

[Tr. 2248] A. The Model 80 did.

Q. I am talking about the airplane that was to be delivered to an airline.

Take the Pan American order to Boeing. This you know all about, Mr. Rummel. You are an expert on this.

How long after the Pan American order was finally given to Boeing was the cockpit configuration installed in the first airplane manufactured for Pan American?

A. Well, I can't be exact on that answer. The installation went in in degrees just as I have described it.

In that particular case, final decisions on what the instrument arrangements would be, consumed quite a bit of time because efforts were made to standardize between airlines.

I would say that as an estimate, that probably between a year and a year and a half possibly.

Mr. Hayes: I notice I have run over, Mr. Brownell. Would you pardon me, please?

The Special Master: Yes. Does that finish that line of questioning?

[Tr. 2249] Mr. Hayes: I finished up to a point.

# Examination (cont'd) by Mr. Hayes:

Q. Did you or your staff at any time between mid-1958 and the latter part of 1960 make any projections for either TWA or for the Tool Company as to what the results would be if TWA operated 990s?

A. Yes.

- Q. Do you recall when those projections were made!
- A. Not exactly, no.
- Q. At whose request were they made?
- A. Mr. Holliday's.

[Tr. 2250] Q. To whom were they circulated?

- A. I can't be sure. I believe that Mr. Holliday, Mr. Thomas and I believe Mr. Leslie received copies. I can't recall whether distribution went beyond that or not.
  - Q. Do you recall what any of those projections showed.

    Mr. Rummel?
  - A. Well, they broadly showed, I believe, that we would be better off having more airplanes, but I don't recall the specifics.

There were several such studies, one specifically on the 990.

Q. It was the 990 I was inquiring about.

Did you receive any response to those studies from Mr. Holliday?

- A. I don't recall any response, as such.
- Q. Did you receive any from Mr. Leslie?
- A. I don't recall any specific response, no.
- Q. When you say "any specific response," do you recal any general response, any response of any kind, specific or general?
  - A. No.
  - Q. Did you receive any response from Mr. Thomas!
- A. Well, I don't recall any specific response from Mr. Thomas.
- [Tr. 2251] Q. Do you recall any response, whether specific or not?
- A. Well, I recall that the four of us met and reviewed this study, but I don't recall any specific responses.

- Q. When you say the four of you, do you mean yourself, Messrs. Leslie, Thomas and Holliday?
  - A. Yes.
  - Q. Can you place the approximate time of that meeting?
  - A. Not-no, I can't.
  - Q. Even by year?
- A. Well, I believe that it was some time in 1960, but I don't specifically recall the date.
- Q. Can you recall the substance of what was said at that meeting by anybody?
  - A. No, I don't.
- Q. Do you have any recollection as to whether TWA considered during the 1959-60 period acquiring different size fleets, less than 63 in number? I mean jet fleets, of course.
- A. Well, there was a great deal of discussion on the cutback, Mr. Hayes, and I know a lot of work was going forward in a number of areas, including financing, but I ITr. 252 don't recall it in terms that you mentioned.
- Q. Do you recall any particular proposed program for jet acquisition by TWA which involved less than 63 planes?

Mr. Sonnett: I assume the question is meant in the same sense as previously defined, and that is, there were no acquisition programs by TWA, but what counsel is inquiring about is acquisitions by the Tool Company of planes which TWA might possibly acquire, or some of which they might.

Mr. Hayes: That was not the question.

Mr. Sonnett: All right, then. Then I think if you are inquiring about acquisition by TWA of aircraft from sources other than by Hughes, I think you ought to alert the witness.

You have been using those questions in the other sense previously.

Mr. Hayes: I think the question was as broad a could be.

What was the question? May we have it, please! (The question was read.)

A. Once we knew of the cutback, we proceeded generally on that basis. We tried to proceed on the best understanding of what it meant.

ITr. 2253 Mr. Hayes: Could I have the question again, please?

(The question was read.)

## By Mr. Hayes:

Q. Can you answer that question, please, Mr. Rummel!

A. Well, from time to time both Boeing and Convair would propose acquisition programs for us for airplane that they hoped to sell to us.

The Special Master: The question was confined to programs originated within TWA, was it not?

Mr. Hayes: That is right.

The Witness: Well, the answer—I don't recal any specific cases then.

# By Mr. Hayes:

- Q. Do you recall any programs in the formation of which TWA participated with bankers, which involved the acquisition by TWA of less than 63 planes?
  - A. No.
  - Q. You never heard of any?
- A. Well, I was aware that efforts were being made it the financing area which I at the time believed to be respon-

sive to our anticipated acquisition of jets, but specifically fleets that TWA somehow originated in relation to financing, I don't recall that.

ITr. 22541 Q. Do you recall any program, the formation of which TWA participated in, which involved the acquisition of 990s?

A. The 990s were given serious consideration at various times and in 1961 they were given additional consideration.

Q. I am speaking of 1959 and 1960.

A. No, I—I don't—I think it was during 1960 that we made the specification efforts that I referred to earlier.

Q. But do you know of any proposed program for TWA in which TWA participated, which involved the acquisition of 990s and other jet aircraft?

A. I don't recall any.

Q. Specifically, do you recall any plan proposed and in which TWA participated which involved a fleet for TWA of 27 Boeings and 25 880s?

A. No.

Q. Or one again in which TWA participated which involved the acquisition by TWA of 25 Boeings and 20 880s?

A. No.

Q. Or one which involved the acquisition by TWA of 27 Boeings, 28 880s and 6 990s?

A. No, I don't remember any specific program.

Q. Or one which involved the acquisition by TWA of [Tr. 2255] 27 Boeings, 24 880s and 6 990s?

A. No.

Q. You know nothing about any of such plans, is that it?

A. I didn't say I knew nothing of any such planes.

Q. Plans, not planes.

A. Oh, plans, excuse me. No, I don't remember those pecific plans.

- Q. You were not consulted with respect to any of them, if such plans were made by anybody?
  - A. I don't recall being consulted.
- Q. By the way, do you know whether the contract that the Tool Company entered into with Convair for the purchase of 990s had a prohibition against assignment, except that it could be assigned to TWA?
  - A. No.
- Q. You do not know that. Did it come to your attention that Toolco entered into any sort of an arrangement with Convair for the acquisition of 7 880M aircraft?
- A. I have the impression there was a negotiation between Toolco and Convair, and possibly Capitol Airlines along that line.

I don't remember now whether a contract actually was drawn or not.

ITr. 22561 Q. You mentioned Capitol Airlines. What is the connection with Capitol Airlines, Mr. Rummel?

- A. I may be confusing that with the Electra affair.
- Q. Did you mean that there was available from Convair 7 880M aircraft which Capitol had originally ordered from Convair?
- A. I don't recall it that clearly. There were some airplanes, either Electras or 880s, which had been ordered by Capitol, which I believe were subject to negotiation by Hughes.

As I say, they may have been Electras, but I am not certain now.

Mr. Hayes: Off the record.

The Special Master: Off the record.

(Discussion off the record.)

- Q. Do you know what happened with respect to the Tool Company contract with Convair for the 990s? Were they ever built?
- A. Well, they were never completed. Some of them may have been in the early stages of construction, but I don't know exactly now what the final status of construction was.
- Q. You say they were never built. None of them was ever built, isn't that a fact?

[Tr. 2257] The Special Master: Never completed. Mr. Hayes: Never completed.

A. That's my recollection, as I just indicated.

Mr. Hayes: Pardon me just a second, Mr. Brownell.

The Special Master: That's all right.

Mr. Hayes: I ask that there be marked for identification as Defendants' Exhibit 62 a document entitled "TWA Fleet Requirements 1961-1970, Issued March 1, 1961, Prepared by the Planning and Research Department of TWA," et cetera.

- Q. Would you look at it please, Mr. Rummel, and tell us if you recognize it?
  - A. Yes, I do.
- Q. Was that prepared by your department and under your supervision?
  - A. Yes, sir.
  - Q. I am sorry?

Tr. 22581 A. Yes, sir.

- Q. That was, was it not, speaking generally, a report on the technical characteristics of various airplanes that were available as of the time it was prepared?
  - A. It included that, but it was more than that.

Q. What more was it then that?

A. It was the—contained all of the information we felt significant for making a specific recommendation to management as to what airplane should be procured.

Tr.2278] • • • Q. Did TWA, I think it was 1961, acquire some 720Bs?

A. It leased for an interim period four 720Bs.

Q. For how long a period?

[Tr. 2279] A. From the period of availability until receipt of a comparable number of their 131Bs.

Q. Do you know how long that period was?

A. If memory serves correctly, around 14 months or so. It might have been a little longer.

The Special Master: Have you finished your answer?

The Witness: Yes, sir.

Mr. Hayes: I thought you were paging through to make some addition to your answer, Mr. Rummel I am sorry.

# By Mr. Hayes:

Q. To what configuration were the 720Bs that TWA leased built?

A. Substantially Northwest Airlines' configuration, I believe.

Q. Had Northwest originally ordered those planes?

A. I believe so, yes.

Q. Did TWA change the configuration?

A. I think we changed some of the instrument panel items, but the changes were held to the absolute minimum on the basis that we would segregate crews. I don't remember exactly what we changed now.

- Q. When you say "segregate crews," you mean you had [Tr. 2280] particular crews operating the 720Bs distinct from those who operated the 131s and the 331s and the Convairs?
- A. What I was specifically saying, crews, specific crews to operate the 720B. We segregated them for that service.
- Q. Is it also a fact when you say "segregated them," that they were not operating Boeing 131s, 331s or 880s?
  - A. No. They were segregated.
  - Q. They were segregated?
  - A. At least not during that time.
  - Q. That is what I mean.
  - A. Crews bid in and out of this situation.
  - Q. Yes.
  - A. It wasn't necessarily the same man in each instance.
- Q. At any time during 1959, did there come to your attention studies made by independent experts with respect to the aircraft, jet aircraft requirements of TWA?
- A. I guess I view Convair and Boeing as independent experts. They came forward with ideas as to what we should do.
  - Q. They were mostly salesmen, weren't they?
- A. Well, they were attempting to sell airplanes, certainly, but they had respectable views as far as I was [Tr. 2281] concerned.
- Q. I am referring to independent experts not connected with the aircraft manufacturers.
- A. I don't recall having outside consultants' opinions available when developing this March 1st report, if that is what you mean.
  - Q. No. I said 1959. The March 1st report is 1961.
  - A. I am sorry. In 1959? Yes, I know it is.
  - Q. I am sorry for the shifting back and forth.

The Witness: Could I have that question?

The Special Master: I think it had better be read back so there will be no misunderstanding.

(The question was read.)

A. I don't recall any relating specifically to requirements.

[Tr. 2313] \* \* \* The Special Master: Proceed.

Mr. Hayes: Are you prepared, Mr. Sonnett, to respond to the offer in evidence of Defendants' Exhibits 66, 67 and 68, the contracts?

Mr. Sonnett: We have not finished our checking of those and I am unable yet to state whether all of those documents which came from the Tool Company files were previously produced to us or not.

If they were previously produced, I would not have a problem. If they were not previously produced, ITr. 23141 I think the Tool Company is precluded by its default from now introducing them. That is my difficulty. It is a mechanical job.

It may be that you can answer it for us and we can take it subject to your statement, because it means going through each of the documents and checking it against our file of the produced documents. I mean if you can state that the Tool Company documents contained in these exhibits were produced to TWA in the course of the discovery proceedings in the case, that will eliminate that problem.

Mr. Hayes: I can obviously make no such statement, because I was no party to it, but I don't see how that constitutes an objection in any way. Partial contracts have been produced here, not complete

contracts. And we should not have a piece of a contract; we should have the whole document or all the documents.

Whether or not the Tool Company produced them is wholly immaterial, if, in fact, they were—if these documents are necessary to paint the whole picture.

We did not ask Boeing for the Tool Company contracts at all, just didn't.

I would suggest that the simplest way to do ITr. 23151 it would be to consider them in evidence, subject to elimination, if it is discovered from Boeing, and we will be glad to undertake the task of communicating with Boeing as to any document as to which plaintiff has any difficulty, confirmation from Boeing that such and such a contract was entered into.

I think this is the easiest way to do it and it will save plaintiffs a great deal of mechanical labor.

Mr. Sonnett: The difficulty with it, I think is—I am not trying to be supertechnical about this—but there is a very real difficulty—apparently some documents included in these proposed exhibits are documents which preceded the making of the agreements, and the Special Master will recall that one of the events of default in this litigation was the deliberate refusal of the Tool Company to produce a bundle of documents which the Court and Special Master held twice were no longer privileged, and which related to these subjects, among other things.

I don't think the Tool Company at this stage of this case, in a hearing as to the amount of damages occasioned by the action alleged in the complaint, is in a position to select documents from its files and

ITr. 23161 now offer them, which documents were not produced previously and they are precluded. This is my problem.

Mr. Hayes: I can answer that part of it very easily.

There were two classes of documents that were ordered to be produced and were not. One was a group of tax returns. The other was a group of documents as to which the Tool Company claimed privilege, in that they were confidential communications.

The Special Master: With whom?

Mr. Hayes: With counsel. Between the Tool Company and counsel.

The Special Master: This is new to me.

Mr. Hayes: I know it is.

The Special Master: Except for a reference in one of the hearings, I have no background on it.

Mr. Hayes: I have personally examined, not in this context at all, all of the so-called privileged documents and none of them is in any way a communication—

Mr. Sonnett: I move to strike that. That's wholly inadmissible. The Special Master—

Mr. Hayes: It is a statement of counsel.

ITr. 2317 Mr. Sonnett: I am sorry. A statement of counsel is no substitute for evidence.

Mr. Hayes: May I finish, Mr. Sonnett? I have always carefully allowed you to finish anything you said, including all your aspersions on the defendants here, and I have never challenged them, because I think that should be done in a brief.

I have tried to conduct myself here as an advocate.

Mr. Sonnett: All right, but I don't think you are permitted or should be permitted to make any statement about the content of the withheld documents at this juncture of this case.

The Court's opinion—two opinions on the subject are very clear.

This is one of the three major acts of default, the reasons for the ruling, made a total of four times, were, an ing other things, that Mr. Raymond Cook was not acting in a legal capacity, but as a business negotiator in respect of these subject matters.

The Special Master: Let me break in here to ask whether it would be any prejudice to giving TWA further time to examine these documents? Because ITr. 23181 the possible objections may disappear in the course of them.

Wouldn't it be better to argue that out after we have found out whether they are going to make a formal objection?

Mr. Hayes: They can have all the time they want, Mr. Brownell.

The Special Master: All right. Let's not make any decision on it.

Mr. Hayes: But I repeat the suggestion I made before, to wit, that if there is any question in their minds as to whether or not in the course of the voluminous discovery in this proceeding a particular document may have been produced from the Tool Company, that can be verified through Boeing. I think that is the fastest way to do it. These are all Boeing documents.

The Special Master: Let us leave it in the status quo, that they have been offered in evidence and

TWA has been given some time to consider whether or not it would make an objection.

Mr. Sonnett: Just so that the record is clear, Mr. Hayes' reference to the other category of documents—

[Tr. 2319] Mr. Hayes: What other category!

Mr. Sonnett: (continuing)—as being tax returns which they refused to produce, is not complete. There is a good deal more.

The Special Master: That is not binding on anyone.

Mr. Sonnett: No, but I just didn't want that idea planted inadvertently in the Special Master's head; it isn't accurate.

The Special Master: I wouldn't begin to form a judgment on that, because I have so little to go on.

Mr. Hayes: I am not going to argue the point.

The Special Master: This is not the proper time.

Mr. Hayes: No, indeed it isn't. I couldn't agree with you more.

# Examination (cont'd) by Mr. Hayes:

- Q. Have you over the recess, since last evening, had a chance to examine Defendants' Exhibit 65 for identification, Mr. Rummel?
  - A. I read Report 3-2065. Here it is, yes.
- Q. That is the same document. Are you prepared to [Tr. 2320] answer the question as to whether Defendants' Exhibit 65 indicates that TWA had fixed on the number of aircraft which it intended to acquire at that time?
  - A. Yes.
  - Q. It does indicate that?
  - A. No, I am prepared to answer.

Q. What is your answer?

A. This report does not indicate that we had or that we had not fixed on a number of planes.

Mr. Hayes: I offer in evidence Defendants' Exhibit 65 for identification.

Mr. Sonnett: May I ask the witness a question with respect to the document?

The Special Master: Yes.

Mr. Sonnett: It will only be one which I thought you were going to ask him and it relates to the admissibility of the document.

The Special Master: Yes, you may ask.

Mr. Sonnett: Will you tell the Special Master, if you can, what was the reason for the preparation of this document?

The Witness: This document was prepared as a direct result of a phone conversation with Mr. Hughes, who requested that a study be made as [Tr. 2321] to the characteristics of and size of alternate fleets, the fleet size being determined by the amount of money that would be required to be invested in a fleet of 25 Lockheed Electras.

This was done to enable me to better discuss the pros and cons of these airplanes in response to his request.

Mr. Sonnett: In light of that testimony, I have no objection to the offer of the document in evidence.

The Special Master: It will be received.

(Defendants' Exhibit 65 for identification marked in evidence as of this date.)

ITr. 23321 Q. What efforts, if any, were made by TWA to acquire any of the planes stated to be available on Page V-10 of Defendants' Exhibit 621

A. Very serious consideration was given to all possibilities that were then known to solve TWA's equipment dilemma including the 880 and the 9-the 880Ms and the 990s as this report reflects. As to detailed efforts to negotiate. I am not entirely clear at the moment.

Q. Did you participate in any of the negotiations with either Convair or with Hughes Tool Company with respect to the acquisition of either 880s, 880Ms or 990s?

A. Yes, I was in touch with Convair and did actively discuss possibilities as well as their offerings to the extent offerings were received.

Q. To what?

A. To the extent specific offerings were received.

What were the specific offerings that were received!

A. Well, I'm not clear at this point because, as I recall them, numbers of offerings were contingent offerings depending on what they would be able to work out with the Hughes Tool Company.

Q. What did they say had to be worked out with the

Hughes Tool Company?

[Tr. 2333] A. Well, broadly, as I recall it, it had to do with the Hughes Tool Company agreeing to-

Q. You say agreeing?

-agreeing to-and I'm not sure of any detailed legal interpretation of what I am saying but what it meant was -what I recall the meaning was that they would have had to agree to give up their interest in or their rights to airplanes which Convair wanted to place in TWA's hands.

Q. Did you have any negotiations with the Hughes Tool Company with respect to Hughes Tool Company giving up

such rights?

A. Well, their efforts I believe and I am just a little vague in detail—I think there were efforts made by TWA and Hughes Tool Company to determine availability. Mr. Davis at one meeting attempted to persuade TWA as to the value of the 990s, I believe.

Q. Did you have any negotiations with the Hughes Tool Company I asked.

A. Well, that's I was trying to answer. I don't recall specific negotiations other than the broad recollection that I have indicated.

[Tr. 2350] • • • Q. Which was faster, the 880 or the 131?

- A. Well, the 880 was faster than the 131 up to the usable range of the 880.
  - Q. Up to what?
  - A. The usable range of the 880.
- Q. Do you know whether or not Mr. Leslie communicated with the Tool Company with respect to acquiring 880s from the Tool Company?
  - A. I'm not certain.
- Q. Did you ever have any conversation with Mr. Leslie in that regard?
  - A. None that I recall.
  - Q. He never consulted you about it?
  - A. Well, he might have. I just don't recall that he did.
- Q. Did any officer of TWA consult you with respect to acquiring four 880s from the Tool Company?
- A. Well, we certainly discussed and I included in the report the possibilities of this type, Mr. Hayes, which were considered prior to our deciding that we'd—it was more beneficial to go a different way.

Tr. 2351] Mr. Hayes: I ask that there be marked for identification as Defendants' Exhibit 72, a telegram—I think this is dated February 27, 1961—I think this is dated February 27, 1961—I think Planning and Research is stamped on top—I am not sure of that—from J. William Bew, San Diego to R. W. Rummel at TWA in New York.

Q. Mr. Rummel, please look at and tell us whether you received it.

A. I don't recall it, but I certainly have no reason to doubt that I received it.

Mr. Hayes: I offer in evidence Defendants' Exhibit 72 for identification.

Mr. Sonnett: No objection.

The Special Master: Received.

- Q. What, if anything, did you do with respect to the information contained in the last few lines of Defendants' Exhibit 72 that Mr. Digges of Convair had [Tr. 2352] said that the Hughes Tool Company would offer all unassigned 880 aircraft to TWA?
- A. I probably advised my associates in management, but frankly I don't recall any specific detailed act. It is too long ago.
- Q. You have no specific recollection now as to what you did?
  - A. No. sir, I don't.
- Q. I show you Defendants' Exhibit 39, which I am advised by Mr. Mallender has been marked for identification. but portions of which have been copied into the record,

which are the minutes of the board of directors meeting of TWA dated March 20, 1961, and I direct your attention specifically to pages 4 and 5, beginning at the lower portion of page 4 under the heading "Report On Future Jet Aircraft Requirements."

Will you read it first, please? Have you read it, Mr. Rummel?

A. Yes, sir.

Q. Did you attend that meeting of the board of directors, do you recall?

A. I don't believe so.

Q. There is a reference there to a detailed study of the corporation's requirements for additional aircraft.

[Tr. 2353] Do you know or can you tell us whether that detailed study is Defendants' Exhibit 62?

A. I am quite sure it is.

Mr. Hayes: By the way, I offer in evidence that portion of Defendants' Exhibit 39 beginning with the words "Report On Future Jet Aircraft," on page 4 and ending with the words "\$250,000," on the lower part of page 5, and following previous practice suggest that the reporter copy it in.

The Special Master: Off the record.

(Discussion off the record.)

Mr. Hayes: Is it in evidence this portion of the report?

Mr. Sonnett: No objection.

The Special Master: Received.

"(Report on Future Jet Aircraft Requirements

The Senior Vice President—Finance and Treasurer reported that, as requested by the Board at its meeting on March 1, 1961, the Planning and Research

Department had prepared a detailed study of the Corporation' Management Committee, based largely upon that study, recommended that an early commitment should be made for delivery during 1962 of twenty additional Boeing Model [Tr. 2354] 707-131B aircraft for Domestic Service and six Model 707. 331B aircraft for International Service and, for the lease of from four to six Boeing Model 720B aircraft beginning in 1961, for a term ending with the delivery of the last of the twenty additional Model 707-131B aircraft. He reported that preliminary discussions with financing interests indicated that the necessary capital financing for this program, in the amount of \$187.5 million, was available, including \$40.5 million to be supplied by cash generated by the Corporation.

After discussion, upon motion duly made and seconded, Mr. Raymond M. Holliday abstaining, the following resolutions were adopted:

RESOLVED, that Messrs. Warren Lee Pierson, Chairman, E. O. Cocke, F.D. Hall, Albert V. Leslie and R. W. Rummel be, and they hereby are, appointed a Flight Equipment Committee to evaluate the flight equipment and present a report to the Board of Directors with the advice and consent of the President, when available, in order that the Corporation may commit for the acquisition of additional aircraft to [Tr. 2355] maintain a fully competitive position in the industry; and further Resolved, that the Chairman of the Board, or the President, or any Vice President of this Corporation be, and each hereby is, authorized to enter into an interim commitment for the acquisi-

tion of additional jet aircraft, provided that in the event the Board of Directors should not authorize the execution of definitive contracts for such aircraft, the Corporation shall not be bound to pay a cancellation penalty in excess of \$250,000."

Q. I notice that the resolution adopted in its first half appoints a committee of which you are a member, and the function of the committee is to evaluate flight equipment requirements of the corporation to determine the availability of financing for such equipment and to present a report to the board of directors with the advice and consent of the president when available, et cetera.

Did such a committee actually operate, Mr. Rummel?

A. Yes.

[Tr. 2356] Q. Did you actively serve on that committee?

- A. Yes. There weren't many meetings. I don't know what you mean by actively participate, but the committee existed.
- Q. Whatever number of meetings there were, did you attend them?
- A. To the extent there were meetings I attended them, as I recall it.
- Q. Was a report presented to the board of directors by the committee?
- A. I don't recall a formal committee report as such. It certainly shouldn't be taken to mean it might not have existed.

I recall that the committee concurred in the equipment recommendations, and I believe finally a means for financing the load—

Q. I missed something.

A. For handling the financing of the load-

Q. I got those words. It was before that I missed, just immediately before.

The Special Master: Will you read it back! (The answer was read.)

- A. —imposed by the program was accepted by the [Tr. 2357] committee.
  - Q. Was what?
  - A. Accepted by the committee.
- Q. What participation did you have in connection with determining the availability of financing?
- A. None. This was handled by—essentially by Leslie who advised the committee members of what he intended to do.

# [Tr. 2362] • • • Examination (cont'd) by Mr. Hayes:

- Q. Mr. Rummel, did Mr. Leslie ever report to you with respect to a meeting he had with Mr. Holliday concerning possible purchase of the four 880s from Hughes Tool Company in the latter part of April 1961?
  - A. I don't recall such a report.
- Q. Do you recall—let me see if I can jog your recollection in any way—Mr. Leslie ever reporting to you that he told Mr. Holliday that TWA would like to have those four 880s?
  - A. No, I-I don't recall his saying that.
- Q. Do you recall any report from Mr. Leslie to you that Mr. Holliday stated that Toolco would not sell the planes to TWA on the basis of accepting subordinated notes?
  - A. No, sir.
  - Q. That does not click in your recollection either?

[Tr. 2363] A. No. I have a general recollection, but I don't remember that.

- Q. What is your general recollection as to that subject?
- A. Well, pretty much as I indicated. We were interested in—as I recall it—in getting the four airplanes and were mable to work out a deal to get them.
- Q. But my question was directed to the payment in the form of subordinated—
  - A. Oh, no, I don't recall that.
  - Q. You have no recollection as to that?
  - A. No, sir, I don't remember anything on that.
- Q. Did you have any conversation with Mr. Tillinghast in the latter part of April 1961, in which you stated in substance that in your opinion it was in TWA's best interest to acquire the four 880s from the Tool Company?
  - A. No, I don't.
  - Q. You have no recollection of that at all?
  - A. Except to the extent that I have indicated.
- Q. If I recall your testimony you have given no indication of any conversation with Mr. Tillinghast at all on this subject.
  - A. No, I didn't specifically.
- Q. You mean you had no conversation with Mr. Tilling-[Tr. 2364] hast on this subject?
- A. No, I don't want to testify that I had no conversa-
  - Q. I am sorry, I did not hear you.
- A. I don't want to testify that I had no conversation with Tillinghast on the 880s or other facets of the equipment program. I am confident that I did.

But I don't recall the situation being that I was in a position to finally recommend the 880s, because I don't recall that we ever worked out a deal in which we could move.

Q. I mean prior to working out a deal, did you ever recommend that it was in TWA's best interest to acquire the 880s?

The Special Master: To Mr. Tillinghast, you mean?

Mr. Hayes: To Mr. Tillinghast, yes.

A. I don't recall that specifically, Mr. Hayes. I think that my view was that if we could work out a deal to get the four 880s, we could probably operate them more quickly than other planes, and that if we could get a deal worked out that was acceptable, we should do it.

But I don't recall a specific meeting with Tillinghast on the point.

(Tr. 2365) Q. Your recollection is that you made a recommendation along the lines you just mentioned, is that it?

A. No. What I am recalling is that that was my view, and I am sure that we discussed the pros and cons of moving ahead.

I don't recall being in the position to finally give Mr. Tillinghast a recommendation to proceed, because there wasn't any basis that I recall on which we could have proceeded.

Q. I am afraid I don't understand you. Aren't your recommendations generally made in advance of commitments that are made?

A. They are made in advance of commitments, but they usually take into account specific offers finally or at least what we expect to work out in terms of the negotiation.

Q. Your recommendations with respect to Boeing's and Convair's were made, as your testimony sets forth, in advance of the entering into of any contracts, were they not!

A. Well, obviously we didn't sign the contract and recommend that we do so at the same time. What I am trying to say is that in the case of the four 880s, as I sit here now, I do not recall our ever having a clear-cut offer from

the Tool [Tr. 2366] Company or an agreement on terms with them on which we could have finally acted.

- Q. Did you ever make a recommendation of any kind to anybody in TWA that the four 880s should be acquired from the Tool Company, assuming that terms could be worked out?
- A. Well, I can't be 100 per cent sure, Mr. Hayes, but I think it is likely that I did take the position that if we could get the airplanes with assurance of delivery and on acceptable terms, that four 880s would be advantageous.
- Q. It was your view then or do I misstate your testimony, that assuming a deal could be worked out with either Convair or the Tool Company, that TWA should acquire the four 880s?
- A. Well, I am quite sure that at one time that was my view and that I had to abandon that objective as being unrealistic.
- Q. I am just trying to find out what your view was, Mr. Rummel.
  - A. I-well, as I recall it now-
- Q. As I understand, the responsive part of your answer was that at one time that was your view?
  - A. I believe that is correct.

ITr. 2367] Q. At what time?

- A. Well, I think prior to coming to a conclusion that we would have to move forward with the Boeing program. So this would have been some time before, oh, March and April of 1961.
- Q. But the Boeing program, according to your testimony, as I understand it, still left TWA immediately short of equipment; is that correct?
- A. Well, I perhaps should say that my—I am trying to recall this particular time period, Mr. Hayes. I thought that's what you were asking about.

- Q. I am talking about 1961.
- A. Well, that's my answer, then.
- Q. The question was, were you still short of equipment in 1961, according to your appraisal?
  - A. In 1961?
  - Q. In 1961-
  - A. Yes.
- Q. (continuing) —after you entered into the Boeing contracts?
  - A. Yes.
- Q. Did you then abandon the possibility of getting four 880s?
- A. Well, not forever, no. It certainly was a hope ITr. 23681 that I nourished that we would some day be able to get more 880s.
  - Q. Did you make any effort to get them in 1961?
- A. I just don't recall now, Mr. Hayes, when the next efforts were made to get 880s.
- Q. Was there any effort made to get 880s until Convair repossessed six 880s from Northeast in 1963?
  - A. I don't recall any.
- Q. Did you make any recommendation to anybody in TWA management in 1961 or in 1962 that TWA press forward in an endeavor to get the four 880s from Hughes Tool Company which were built to TWA configuration?
- A. Well, as I just indicated, I think it was early in 1961 that we attempted to negotiate and to give serious consideration to the four 880s.

After that, we may have, but I don't recall right now whether or not we did or, if we did, just what it was.

Q. You also testified, as I recall your testimony, and correct me if I am wrong, that you thought the efforts were abandoned after the Boeing contracts had been entered into.

A. Well, for the immediate ensuing period, I think thats—

(Tr. 2369) A. The immediate ensuing period, I think that's right. I don't think we ever closed the door to the possibility of picking up additional 880s.

Q. What efforts did you make to get them, is the question?

A. Well, my answer was I am not sure what we did in that time period. I don't recall any specific instances.

Q. I am asking what you did, Mr. Rummel.

A. Well, I am giving you my best recollection, Mr. Hayes.

Q. Are you saying that you did nothing?

A. I am not saying that. I am saying that I don't at this time recall having done anything in that time period.

Q. Did you make any effort to acquire 990s, the 990s that the Tool Company had on order at the time?

Mr. Sonnett: In addition to whatever he has covered in prior testimony?

Mr. Hayes: I never asked this question before. I am speaking of the period after he said the Boeing contract was entered into. I have never asked him this question before.

ITr. 2370] Mr. Hayes: Pardon?

Mr. Sonnett: Are you asking the witness what efforts he made, if any, after April 1961 with respect to the acquisition of 990s?

Mr. Hayes: Whatever the date the Boeing contracts were. I think April 1961 is correct, but I am not absolutely sure.

A. I don't think I did on the 990s.

Q. Those 880s that were on order with Convair by Toolco were completed, were they not?

- A. Well, they are in service, Mr. Hayes, with Northeast Airlines.
  - Q. So the answer is they were completed?
  - A. Sure. At one time or another.
- Q. Do you know what happened after they were completed and before the Tool Company leased them, I believe it was, to Northeast Airlines?
- A. I am pretty sure they were parked somewhere by Hughes.
  - Q. You mean Hughes Tool Company, I suppose!
- A. Well, by Hughes Tool Company or their representatives or by Hughes. And the question existed as to their status in terms of title, but I don't recall any detail on that at the moment.
  - [Tr. 2371] Q. Where do you recall they were parked!
  - Well, I am not sure where they were parked. Does Ontario, California click in your recollection! Q.

  - A. Yes, I believe it was Ontario, yes.
  - Q. They were not being used by any airline?
  - A. Not as far as I know.
- Q. Do you know when they were eventually leased by the Hughes Tool Company to Northeast Airlines!
  - A. At the time the six Convairs were foreclosed.
  - Q. That was in 1963, was it not?
  - A. I think that's correct.
- By that time, do you know that the Hughes Tool Company had acquired a substantial interest in Northeast Airlinest
  - A. Yes.
  - Q. With the approval of the Civil Aeronautics Board!
  - A. Well, I think I understood that.
- Were those four 880s, so far as you know, up to the time that they were leased by the Hughes Tool Company

to Northeast Airlines ever acquired by or leased by any other airline?

A. I don't believe so.

st

y

ir

ıt

1

1

ITr. 23721 Q. Do I understand your testimony to be that so far as you know they were simply parked during that intervening period?

A. So far as I know, they were simply parked and not available for anything but parking.

Q. What do you mean by "not available for anything but parking"?

A. Well, there were times when we had covetous eyes on those planes. I don't recall ever having known that they were available to us or anybody else.

Q. How far did your covetous eyes carry your desires, Mr. Rummel? Did they result in action of any kind?

A. Well, at one point in time, I recall, after checking with Mr. Tillinghast, calling Ray Holliday to determine their status, but I don't recall the specifics on that, either.

Q. Can you fix the year?

A. No, I don't think I can.

Q. Do you know whether it was before or after TWA entered into the Boeing contracts in early 1961?

A. I am sure it was after that, Mr. Hayes.

Q. Did you communicate with Mr. Holliday?

A. This was by telephone.

Q. Did you communicate with him-

[Tr. 2373] A. Yes.

Q. (continuing) —by whatever means?

A. Yes, I just said I did.

Q. What was the substance of the conversation?

A. Well, I don't recall it in detail. I think the substance was would he be interested in making his planes available or could he make them available.

### Q. Yest

The Special Master: What was the substance of what he said?

The Witness: The occasion, I remember, and I am having trouble with the timing here, was that he wasn't sure, he would check in to it and call back.

And he did call back. It's coming back to mind now. This was when we again gave consideration to this possibility at the time the Storer acquisition of Northeast was announced, and he called back at that time and said that the duration of the use of these four airplanes by Northeast wasn't known, that he would keep the inquiry in mind, but at this time they couldn't talk about those particular planes. So this was after the period he was talking about.

ITr. 2391] • • • Q. On the next page where there is a production and delivery schedule, there is a customer I wish you would identify—the others are all clear to me—and that is REAL for production Nos. 13, 19 and 20.

Do you know who REAL is?

Mr. Hayes: Off the record. (Discussion off the record.)

Q. Do you know the initials REAL refer to an airline
A. I'm pretty sure they do, Mr. Hayes.

Mr. Hayes: I offer in evidence Exhibit 76 excluding the handwritten notations on page 2.

Mr. Sonnett: No objection.

The Special Master: Received.

(Defendants' Exhibit 76 for identification, received in evidence, as of this date.)

Q. You testified previously that you had generally lost interest in ordering the 880s, the four 880s from [Tr. 2392] the Hughes Tool Company when the Boeing contracts were entered into in April.

Did interest continue in TWA in acquiring the thirteen 990s that Hughes Tool Company had on order with

Convair?

Mr. Sonnett: May I have that question? (The question was read.)

Mr. Sonnett: I think the question assumes a state of the record which is incorrect. I don't know that there is any evidence that TWA was interested in acquiring the 990s in April 1961.

As a matter of fact, part of our complaint alleges that TWA was resisting the efforts of Hughes' representatives to force the 990s down TWA's throat. They decided they didn't want them.

Mr. Hayes: Aside entirely from this sanctity of the complaint I will withdraw the question.

Q. I will put this question to you: After the Boeing contracts had been entered into, did TWA have any interest in acquiring the 990s which the Hughes Tool Company had on order from Convair?

A. Well, as I believe I testified earlier, Mr. Hayes, I don't believe so.

ITr. 2393 Q. Do you recall the occasion for your sending Defendants' Exhibit 76 to Mr. Tillinghast with copies to the other four gentlemen?

A. Yes.

Q. What was the occasion?

A. The occasion was to keep him fully informed on delivery expectancy of the 990s, and to make sure that he

understood that the report earlier submitted—the big thick report we were talking about—

Q. Defendants' Exhibit 62?

A. 62. —had contained certain 990 estimates. It also had contained statements to the effect that I then believed that Convair could not make the estimated delivery dates on the 990s.

An the purpose of this was to acquaint Mr. Tillinghast and the others with current projections which substantiated the position taken in the report that they would not meet the dates and further to update the information reported in this respect.

Q. Did Mr. Tillinghast tell you when he asked for this memorandum what his purpose was in getting a revised schedule on the deliveries of the 990s both to American and Hughes Tool Company?

A. I don't recall that he asked for it other than ITr. 2394] as a result of the conversation with him. The answer simply is no.

Q. You do begin your memorandum by saying, "In response to your verbal request." So he must have asked for it, did he not?

A. Well, Mr. Hayes, this was a way of starting a letter and what I am trying to say is that I—I don't recall the particulars but I think that I had mentioned in passing to him that as I had predicted earlier we had indications now that the deliveries were slipping, was he interested in knowing something to that effect, and I think he said, yes, by all means, or something.

I just don't remember the detail but I think it was that kind of a thing.

And it developed in the interest of updating the earlier report.

- Q. Was Mr. Tillinghast also interested in learning when American would receive its 990s and be able to put them into service?
  - A. Naturally.

Q. Did he express to you any concern about American getting twenty-five 990s between November 1961 and July 1962, as against TWA's equipment situation at that time?

ITr. 2395] A. I don't remember a specific discussion on that point leading to this letter, but I can assure you that he was keenly concerned and alerted and aware of the competitive thrust that our competitors could put forward with their jets.

Q. Do you recall any such discussion with him after he received Defendants' Exhibit 76 from you?

A. Well, I don't remember any immediately after. Later on, there were lots of discussions on American Airlines-Convair situation.

Q. How late is later on?

A. Well, during the period of—that we could clearly—more clearly anticipate 990 difficulty and the specific American-Convair problems that arose.

Q. How much later was that?

A. Mid to-well, I'm not entirely sure of the timing on that.

Q. Can you identify the year?

A. Well, I think it was later than 1961 and 1962 but I can't be entirely sure.

Q. Did Mr. Tillinghast at any time say to you that American would have a competitive advantage over TWA as a result of its acquisition of the 990s?

A. No, I don't remember specific statements to ITr.

Q. With respect to the four 880s that the Tool Company had on order with Convair, did Mr. Tillinghast ever say to you in substance that they would be helpful in covering segments that were not covered by TWA's existing equipment!

A. Not exactly in those terms.

Thave the impression that Mr. Hughes—Mr. Tillinghast was quite sympathetic to our getting the four 880s if acceptable terms could be worked out.

Q. Did you ever tell Mr. Tillinghast that the four 880s could be used on segments, if acquired from the Hughes Tool Company, which were not being covered by jet service?

A. Well, this certainly could have happened, Mr. Hayes. I don't specifically recall it, no.

Mr. Hayes: I ask that there be marked for identification as Defendants' Exhibit 77 a letter dated June 10, 1961, to TWA, attention Mr. Tillinghast, to the voting trustees, to the Irving Trust Company as agent for the equipment noteholders, to the Equitable Life Assurance Society, Metropolitan Life Insurance Company, from Hughes Tool Company signed by Mr. Holliday.

[Tr. 2397] · · ·

### By Mr. Hayes:

Q. Would you review it, please, Mr. Rummel, and indicate when you have done so?

Tr. 23981 The Witness: I have looked at it, Mr. Hayes.

Mr. Hayes: In describing it, I neglected to mention that there was also attached a letter dated July 29, 1961—

Mr. Sonnett: June 9th.

Mr. Hayes: I am sorry, you are correct. June 9, 1961, from Hughes Tool Company by Mr. Holliday to TWA, attention of Mr. Tillinghast.

- Q. Mr. Rummel, now that you have read Defendants' Exhibit 77, I ask you if either the letter dated June 10, 1961, or the attached letter of June 9, 1961, ever came to your attention?
- A. I believe the June 10th letter did. I am not sure about the other one.
  - Q. How did that happen? Tell us the circumstances.
- A. Well, I think Mr. Tillinghast called it to my attention. I don't remember any special circumstances.
- Q. Do you recall any discussion with Mr. Tillinghast [Tr. 2399] concerning it?
  - A. No, I don't, Mr. Hayes.
- Q. Do you recall at that time any discussion with Mr. Tillinghast with respect to the acquisition of the 990s or of the four 880s which the Tool Company had on order with Convair?
- A. Well, I am quite sure that as a result of your calling this to my attention, I reviewed acquisition programs and the equipment parts of this letter, and then subsequently discussed that phase with him.
  - Q. Do you recall the substance of the discussion?
- A. Well—no, I don't, excepting that that my views on the merits of the 990, as such, compared to the merits of the Boeings was not altered by this letter. We came to the same conclusion that we had earlier concerning the 990 vs. the Boeing program.
  - Q. Versus which Boeings now?
- A. Well, I am speaking of the program to buy, which I believe we at least had tentative commitments on at this

time or possibly tentative commitments to buy the eighteen 131Bs and the six 331Bs.

- Q. Do you know what the delivery dates were for the 131Bs?
- A. I certainly knew them then. I don't recall right [Tr. 2400] now what they were exactly.
- Q. Did you in your discussion with Mr. Tillinghast concerning Defendants' Exhibit 77 in substance recommend against acquiring the 990s?
- A. I held the view that the Boeing program was preferable, I believe, both before and after this came in.
- Q. But did you press your view to Mr. Tillinghast and advise against acquiring the 990s?
  - A. Oh, I am quite sure I did.
  - Q. Did you advise against acquiring the four 880s!
- A. I don't recall what I said on the 880s at this time, Mr. Hayes.
- Q. Is that the end of your answer or do you want to add something to it?
- A. I have seen something here that refreshed my memory.
  - Q. Fire away.
  - A. Well, I guess that was all of my answer.

Mr. Hayes: I offer in evidence Defendants' Exhibit 77.

Tr. 2419] • • • The Special Master: All right, it will be received, the entire document.

# By Mr. Hayes:

- Q. Were you by any chance present at this meeting of the board of directors held on June 21, 1961, do you recall
  - A. I don't believe I was.

# Q. I direct your attention to-

The Special Master: What is that reference on page 3 "It is further stated that subsequently Mr. Rummel was present at the meeting, analyzed the various points raised by Mr. Davis and submitted a report on the subject."

I don't know whether that means this meeting or not. It is a little ambiguous.

# Q. Will you read that on page 3?

The Special Master: About ten lines down, yes. Mr. Sonnett: This is a meeting of the flight ITr. 24201 equipment committee and others. If you look at the prior sentence I think that is what it refers to. It should have been at that meeting instead of "at the meeting."

- Q. Your recollection is that you were not at the directors meeting, Mr. Rummel?
  - A. I'm virtually positive of it.
- Q. I direct your attention, if I may, to Resolution No. 3 which is the second resolution which appears on the page 5 of Defendants' Exhibit 40.

Would you read it, please?

- A. I've read it.
- Q. Is it your recollection that the action there recorded that TWA should acquire additional Boeing aircraft rather than the 880s and 990s was in accordance with your recommendation or the recommendation of the flight equipment committee?
- A. I'm quite sure that with specific respect to Proposal No. 3, that is correct.

[Tr. 2482] • • • Q. So far as the 727s were concerned, TWA would have had to finance the purchase of 727s, would it not?

- A. I do not recall the 727s being offered for lease.
- Q. Or on a conditional sale?
- A. I'm not wholly positive of that, but I don't believe they were.
- Q. The contract that was made for the 727 was an outright purchase agreement, was it not?
- A. Well, the contract that was entered into I think during the fall of 1962 for ten of them was a purchase agreement.
- Q. Was that about the same time that TWA changed its agreement with Boeing from a purchase of 331Bs to a lease of 331Bs?
- A. Well, a change was made with respect to some of the planes you mentioned, and the papers, I think, were [Tr. 2483] finalized about the same time.
- Q. Was it that kind of a change which they covered, to wit, a change from a purchase of 331Bs to a lease of 331Bs!
  - A. That was included among other things.
  - Q. What else was included?
- A. Well, the change, I believe, from six to five 331Bs at that time.
  - Q. Right. Any other change?
  - A. I don't recall any with respect to the 331Bs.
  - Q. Or the 727s?
  - A. Or the-
  - Q. Or any other order you had pending with Boeing!
- A. Well, the—I believe the 131B order—I believe it was changed from eighteen—from twenty to eighteen 131Bs, if I recall correctly.

And as I say at that time ten 727s were included.

Tr. 2493] • • • Examination (cont'd) by Mr. Hayes:

Q. Have you any knowledge, Mr. Rummel, as to whether TWA attempted, through its bankers or its lenders, to arrange financing for the acquisition or which would enable them to acquire the Caravelles?

A. Mr. Leslie handled this sort of thing at that time and I am not very familiar with it.

- Q. Do you have any knowledge of the subject?
- A. Nothing specific.
- Q. Do you know whether Mr. Leslie did approach the insurance companies or the banks which then were the lenders to TWA with respect to the acquisition of the Caravelles?
- A. I believe he had discussions, but I don't know with whom.
- Q. Is that the sum total of your knowledge as you sit here!

[Tr. 2494] A. Yes.

- Q. Do you know whether or not Mr. Leslie or anyone on behalf of TWA had any discussions with any of TWA's bankers or lenders with respect to possible financing of the acquisition of the four 880s and the thirteen 990s?
  - A. No, I don't.
  - Q. You have no knowledge on the subject?
  - A. I don't recall any.
- Q. You mentioned this morning some of the changes that were made in the existing TWA order to Boeing at the time ten 727s were ordered. There was a change from a purchase of six 331Bs to a lease of five 331Bs, and there was a cutback in the number of 131Bs.

Who negotiated those changes in contract with Boeing?

A. I believe I did, but with the assistance of some others as appropriate.

Q. Who were the others who assisted you?

A. Well, I had—I am quite sure that Mr. Leslie attended a few of the New York meetings with Boeing, and then others in my department. I believe Mr. Rourke participated.

There could have been some others. That's all [Tr. 2495] I recall at the moment.

- Q. Did the commitment to Boeing for purchase, as rearranged, require any new or additional financing on the part of TWA, do you know?
- A. No, I don't know, compared to the original Boeing order. I don't know.
- Q. Did you attempt to negotiate with Boeing at any time to reduce your existing orders for 131Bs—I am speaking now of late 1961—or to change a purchase of six 331Bs to a lease of 331Bs so that funds could be released to acquire the Caravelles?
  - A. Well, the—I don't recall it quite in those terms.
  - Q. Tell us what you do recall, Mr. Rummel.
- A. Well, I mentioned this morning that a—one of the forecasts indicated that a cash problem existed or would exist at some future time if we continued with the Boeing plan, I believe, with or without Caravelles.

The Carvelles made it worse. That is, made the problem more acute, had we gone ahead with that, too, as I recall it.

[Tr. 2532] Q. I am sorry.

- A. I don't think TWA ordered as such until 1961, wasn't it?
- Q. No. You know what I mean. The Tool Company orders, were they, in point of time, later than the orders of other airlines for smaller quantities?

A. Yes, the—at least the order for 331s was made later than some airlines who had ordered smaller quantities.

Q. So it did happen that later orders in time were for larger quantities.

I am asking you what was Boeing's practice in that situation?

A. Well, to perhaps clarify what I said—maybe I misunderstood you—this was talking about the first three or so orders.

The positions, the delivery positions that were obtained were in some instances better than those given to some of the smaller airlines who ordered four planes for similar type airplanes, I believe.

Q. Is that because of the greater size of the order?

A. Well, I don't think it was quite that simple. That may have been one of the Boeing considerations at that time.

ITr.25331 Q. Straighten me out, Mr. Rummel, so that it won't be quite that simple.

Tell us what else you have in mind.

A. Well, I interpreted your question I hope correctly to be was it done solely for that reason, and I am saying that I doubt if Boeing's consideration was quite that simple.

Q. Have you finished your answer or were you going to add something?

A. Yes, I had finished.

Mr. Sonnett: Would you read it back to me, please?

(The record was read.)

Q. What were the other Boeing considerations that you have in mind and have not told us?

A. Well, in that specific instance I had the impression that Boeing valued Hughes as a customer not only for what

he then might order, but because of the fact that TWA's operations spanned three-quarters of the world and, as such, it represented a very large customer through the years.

They were anxious to have TWA on board, so to speak

[Tr. 2551] • • • Mr. Hayes: I have not offered them in evidence yet.

The Special Master: You may use them to refresh the witness' recollection. We will take this one step at a time.

Will you examine the letter we have in mind?

Mr. Hayes: I directed the witness' attention with respect to Defendants' Exhibit 96, the letter to Pan American to the paragraph No. 3 called "Delivery" which begins on the fourth line at page 2, and ends with the words "Commercial customer," just above Item No. 4 on page 3.

Mr. Sonnett: I don't think that's appropriate examination. I think the witness ought to be asked whether—

The Special Master: Wait a minute. Maybe ITr. 2552 he will be.

Mr. Hayes: He has to look at it first.

The Special Master: The question is to have him look at it. I will allow him to look at it.

I will allow him to be asked whether it refreshes his recollection as to Boeing's sales policies.

The Witness: No.

Q. Did you ever know, did you ever learn that Boeing in June of 1955 made an offer to Pan American which included an offer not to deliver any 707s to any other customer before delivery to Pan American of eight aircraft.

Mr. Hayes: I will withdraw the question. I phrased it badly.

Q. Did you ever know or did it ever come to your attention that Boeing offered to Pan American, if it placed an order by July 18, 1955, that it would deliver eight 707s to Pan American before any 707 would be delivered to any other customer?

A. I didn't know this particular offer as best I can re-

ITr. 2553 Q. I am not thinking of this document now. I am asking about the subject generally.

Did you ever know that Boeing offered to deliver eight 707s to Pan American before it made a delivery of a 707 to any other customer?

A. Not specifically, as I recall it, no.

Q. What do you mean by not specifically?

A. Well, I'm quite confident that there were numbers of offers to numbers of people, all with expiration dates, and I just don't recall having known then this particular situation.

Q. Did you ever know of an offer by Boeing to Pan American to deliver any number of 707s to it before it made delivery of any 707 to any other customer?

A. I think it was perfectly clear once you knew that Pan Am's order had been placed that they would receive the first airplane.

Q. You mean the moment it was placed?

A. I think by the time we were aware of the order it became clear to us that the first planes would be delivered to the first customer through our discussions with Boeing and our general knowledge of the situation.

Q. Fine.

Now will you try to answer the question, Mr. [Tr. 2554]

The question was did you ever know that Boeing offered to Pan American to deliver 707s to it before it would deliver 707s to other customers?

- A. It doesn't come to mind.
- Q. You have no recollection of ever hearing of an offer by Boeing to prefer Pan American over any other airline by guaranteeing to it a specific number of 707s before delivery of a 707 was made to any other?
  - A. No, not as I sit here now.
- Q. In mid-1955 and prior to June 24th, do you know if Pan American, American and United Airlines were all working with Boeing concerning possible orders of the 707s from Boeing?
- A. Yes, I'm sure that these three airlines were working with Boeing and Boeing was working with them as were other manufacturers.
- Q. Yes, I am thinking of just those three at the moment.

Were those airlines or any of them at the same time working with Douglas, looking toward the order of DC-8 jets from Douglas?

- A. Well, these three airlines were working with Douglas during this period exploring jet acquisition [Tr. 2555] possibilities, I'm sure.
  - Q. All three of them?
  - A. Yes.
- Q. I direct your attention to Defendants' Exhibit 97 for identification, that is, the letter from Boeing by Mr. Connelly to American Airlines.

Mr. Sonnett: Have you left 96, Mr. Hayes?

Mr. Hayes: Not entirely. I will be back to it.

Mr. Sonnett: All right.

Mr. Hayes: Don't file it away permanently.

Q. I would direct your attention to page 3, Item No. 4, delivery, where there is set forth a delivery schedule by months of 15 airplanes, and followed by language down to Item 5 "Term of offer."

Will you please read that language?

- A. I read it.
- Q. Do you have Defendants' Exhibit 96 for identification before you also and Defendants' Exhibit 97 for identification?
  - A. Yes.
  - Q. You will note that the delivery schedule set forth-

The Special Master: You do not want to ITr. 25561 describe them, I guess, at this point.

Mr. Sonnett: Also one relates to 25 aircraft and another relates to a different number.

Q. Have you noted, Mr. Rummel, that the first monthly delivery set forth in Defendants' Exhibit 97 of April 1959 is after six aircraft would be delivered to Pan American—

The Special Master: I suggest that you not describe in detail the contents here until we decide whether or not it is going to be put in evidence.

Could you just ask him to compare the two and base your question on that?

Mr. Hayes: I could do it that way.

Q. Would you compare the two and tell me if the offer to American, Defendants' Exhibit 97, gives effect to the delivery of aircraft to Pan American in advance of delivery to other airlines?

Mr. Sonnett: I object to the form of the question.
The Special Master: Sustained.

Mr. Hayes: I think this is a perfectly proper question, Mr. Brownell.

The Special Master: You can use these ITr. 2557 documents to ask him to refresh his recollection, but if you are going to ask that they be admitted into evidence at this time I will decide that they should not be.

Mr. Hayes: Mr. Brownell, if you will hear me on that and I hope you have not made up your mind finally, I will get nowhere if I ask him if it refreshes his recollection because he has none.

The Special Master: You have not asked him yet.

Mr. Hayes: He comes along here and says I don't know anything about this. This is something that Boeing was doing privately. But yet he presumes to tell us what Boeing's sales practices and policies were. This is more than refreshing recollection. This goes to the very foundation of his testimony, I submit.

I may use these concededly authentic documents from Boeing to show he did not know what he was talking about in his statement. I mean, it is a very basic point I have here.

Refreshing a recollection that is non-existent gets me nowhere. I submit that I have a [Tr. 2558] perfect right to show the lack of foundation for this witness' statement as to what were Boeing's practices and policies. I would ask you to reconsider in the light of that consideration.

Mr. Sonnett: May I point out-

The Special Master: No, I don't think I need any further argument on this. I see no reason to reconsider in view of Mr. Sonnett's statement that he will

have no objection to the introduction of these documents as part of the cross examination of Mr. Connelly.

But since Mr. Rummel has testified that he had no knowledge of these documents, I'm assuming in this discussion that that is his position.

I don't see how it can be used as a proper basis for cross examination of him.

Mr. Hayes: Because he presumes to be an expert as to Boeing policies, on his own. He does not rely on Connelly at all. He relies on his own statement.

I am confronting him with what Boeing was doing, and I submit it is proper—I can't think of any better way to demonstrate that there is no [Tr. 2559] foundation for the paragraphs in his prepared statement, TWA Exhibit 2, than to show that it lacks foundation. If Mr. Sonnett says that Mr. Connelly is his witness on this subject, then I move to strike from the prepared statement here all of the paragraphs under the heading "Boeing 707 Reallocation of Delivery Dates," including Annex D. They have no proper place here if I am not permitted to cross examine Mr. Rummel concerning them.

The Special Master: I don't think Mr. Sonnett has made that statement. Whether he has or not, the motion is denied.

Q. I direct your attention, Mr. Rummel, to Defendants' Exhibit 98 which is the Boeing letter to United Airlines dated June 24, 1955.

I might mention that the letters to American and United were the day after the letter to Pan American.

Particularly to page 3 of Defendants' Exhibit 98, Item 4 headed "Delivery."

I would ask you to read it.

The Special Master: Have you read it. The Witness: Yes, sir.

- Q. If you had known at the time you prepared your prepared statement that Boeing had offered earlier [Tr. 2560] deliveries to Pan American than it offered to any other airline, would you have made changes in your prepared statement and in Annex D?
- A. Well, based on an extremely limited look at these particular sections I don't think so.
- Q. If you had known at the time you prepared your prepared statement that in June 1955 Boeing had offered aircraft to Pan American with preferences in delivery as against all other airlines, and that on the next day it had offered aircraft to American and United with no preferences in delivery to them as against other airlines, but subject to a preference to Pan American, would you have changed anything in your prepared statement?

Mr. Sonnett: I object to the form of the question as not properly based on anything that is in evidence and argumentative.

The Special Master: Overruled.

A. Well, I don't think so, Mr. Hayes.

I think the knowledge and personal experience that I had through extended negotiations with Boeing through an extended period of time would have overridden this particular thing which may well have been the result of negotiation. I don't know what it is as I look [Tr. 2561] at it.

- Q. If I recall your testimony in this case, it was in substance, and it conforms with your prepared statement, that it was Boeing's desire to treat Pan American, American and TWA equally.
  - A. Equitably.

- Q. What is the difference?
- A. On the assumption that we all ordered at about the same time.
  - Q. At about the same time?
- A. Well, we couldn't be wholly equal. We couldn't obviously receive the same airplane.
- Q. Obvious. Aside from being ridiculous is the answer to my question a yes?

Mr. Sonnett: I object to the form of that question. Counsel seems to overlook the fact that in each of these cases these documents refer when they open up to discussions which preceded the document, they also overlook the fact that in the Pan American case it was a proposal for 25 aircraft and a reference to delivery of eight.

The Special Master: The witness may answer the question.

The Witness: Could it be read, please? [Tr. 2562] The Special Master: Surely.

Mr. Hayes: The question is what is the difference between treating the three airlines equitably and treating them equally and Mr. Rummel's answer was they obviously couldn't get the same plane. I assume he knew I wasn't talking about getting the same plane.

I asked him what the difference was between equally and equitably.

The Special Master: Do you have anything further to add?

The Witness: No. What I said was the practical exigencies of this situation had to be taken into account.

Q. If you had known that Boeing on June 23, 1955, had made an offer to Pan American with a preference of eight deliveries over all other airlines, and on the next day made offers to both American and United with no preferences to either of them over the other, but subject to the preference to Pan American, and in the light of your testimony that all three airlines were negotiating with Boeing at the same time, to wit, the dates of the letters, would you change your prepared [Tr. 2563] statement or any of your testimony in this case?

A. No.

Q. Not even the statement that if they had been ordered at about the same time in the quantities actually ordered there would have been different deliveries than those you fabricated in Annex D?

Mr. Sonnett: I think I will have to object to the form of the question as quite unnecessary to put it in that form.

Mr. Hayes: I don't know what's the matter with the form.

The Special Master: Overruled.

You would have not changed that part of your testimony?

The Witness: I think my projection would have been the same. I would not have changed it, no.

Q. Even though you would have known that Pan American and United and American had not, in fact, been treated equally at the time the offers had been made to them?

Mr. Sonnett: Again, this is a misstatement of the documents.

The Special Master: Do you object?

Tr. 25641 Mr. Sonnett: I object.

### A-885

### Rummel-Recross

The Special Master: Sustained.

Mr. Hayes: Could we suspend?

The Special Master: Yes.

[Tr. 2587] The Special Master: Do you want to press your motion to strike or do you want to reserve decision?

Mr. Sonnett: I do press it on the ground already stated and lastly of course I have not had a chance to cross-examine whoever prepared this or to cross-examine anybody in Boeing\_with respect to any of these agreements.

It just seems to me it is a document based on hearsay at this stage.

The Special Master: I will deny that motion.

# By Mr. Hayes:

Q. As I recall your prior testimony, Mr. Rummel, you were not able to fix a time when the international version of the 707, the—what is it, 320 or 300 Series?—became available for contract.

Can you tell us now when it became available?

Mr. Sonnett: As I recall it—

The Special Master: I am sorry, I was looking for something and I did not hear that question. May I have it read again?

(The question was read.)

Mr. Sonnett: As I recall it, we had some problems earlier about what was meant by the ITr. 2588J expression "available for contract." Perhaps if counsel could clarify that we can avoid the wastage of time for lack of definition.

Mr. Hayes: By available for contract I mean that Boeing was in a position to make contracts for the manufacture and delivery of such planes.

The Special Master: As evidenced by some ac-

tion of Boeing?

Mr. Hayes: Yes, when they offered them to the airlines. When they submitted proposals to the airlines for the TWA version of the 331.

Mr. Sonnett: As of November 1954, the broadcast to the industry, which as I recall it is the earliest document.

The Special Master: Did you know that they were ready to offer a plane before then?

The Witness: It was during the fall of that year, Mr. Brownell, that the big push you might say was on by Boeing and that the airplane became crystalized. And I think it was during the fall that the Hughes delivery positions were obtained. I don't recall the exact form. It may have been a letter, it may have been a wire.

Boeing was not then in position to finalize IT: 25891 contracts. There may have been papers, agreements, conditional agreements, one kind or the other and I don't believe that the contracts as such in terms of defining detailed terms and including specifications were squared away until some time during the first quarter on the international version.

### By Mr. Hayes:

Q. First quarter of what year?

A. It may have been late in December in some instances. I'm not entirely sure of that.

The Special Master: You are talking about December 1954 and early 1955?

The Witness: No, 1955-1956.

This I might say is a normal thing. The deals usually mature over a period of months.

- Q. In your answer you said something about delivery positions being given to Hughes. Did you mean Hughes or Pan American in the fall of the year?
- A. Well, I'm quite sure—here again I can't be wholly certain as to timing—that it was some time in the—by the fall I mean the fall-winter, late in that year.
  - Q. Late in 1955?
- A. Yes, I'm not including all the winter months by the [Tr. 2590] calendar.

Yes, I think—I believe what they then offered with respect to 331 deliveries were around that period of time.

- Q. By fall-winter, do you include the months of October, November and December?
- A. That I'm not sure as I say precisely when that occurred but my best recollection it was somewhere in that period, probably in the latter part, but I'm not sure of that.
- Q. Would it conform with your recollection if I stated to you as of November 2, 1955, Boeing was not in a position to submit proposals on the over ocean configuration of the 707?

The Special Master: 320.

Mr. Hayes: It is the 331 of TWA. The 300 Series, I believe it is called.

- A. No.
- Q. It does not?
- A. No, it doesn't.

Mr. Hayes: May there be marked for identification as Defendants' Exhibit 102 a memorandum from R. L. Bell of Boeing-

He is of Boeing?

[Tr. 2591] A. He was of Boeing at that time.

O. He was?

A. Yes

Mr. Hayes: -to W. E. Beall, with copies to Messrs. Allen, Wells, Yeasting, Martin, Pennel Schairer, re, 707 over ocean configuration and proposal letters to be prepared for foreign airlines, dated November 2, 1955.

Q. I show you Defendants' Exhibit 102, and I ask you if it refreshes your recollection that as of November 2, 1955, Boeing was not in a position to submit proposals for over ocean aircraft.

Mr. Sonnett: What is the question?

(The question was read.)

Mr. Sonnett: Has it been established that the recollection of the witness on the subject matter has been exhausted before we reach this document?

Mr. Hayes: Yes, he has given his best recollection time and again, I think.

The Special Master: I would think so.

[Tr. 2592] Does this refresh your recollection on that point?

The Witness: No, it doesn't add anything.

Q. You mentioned a few moments ago I believe, that you thought that certainly by the end of the year 1955, delivery positions had been communicated to TWA by Boeing.

Do you recall that testimony?

A. No, I don't. I think they were communicated to Hughes and those representing Hughes. I don't know if they were to TWA. I don't believe I testified to that effect.

Q. Communicated to anybody, to TWA or to Hughes, anybody involved in the procurement of planes for TWA.

A. Well, I have the impression that I just conveyed on that point, Mr. Hayes.

Mr. Hayes: I ask that there be marked for identification a Boeing memorandum dated December 23, 1955 marked "Confidential" from R. L. Bell to E. C. Wells and Messrs. Allen, Beall and Connelly, re Model 707 delivery schedules.

This will be Defendants Exhibit 103.

Tr. 2593] • • • Q. In the opening sentence, Defendants' Exhibit 103 for identification refers to a TWA request and then sets forth delivery positions being held for TWA for the Model 120 and the Model 320 Series.

Do you have any recollection that at or about that time such delivery positions were communicated to TWA?

A. I think this jibes with my general recollection but I don't remember the specifics, Mr. Hayes.

I think that Boeing generally from their viewpoint viewed Hughes and TWA as an identical, synonymous type term.

Q. Do you have any recollection that you received either directly from Boeing or through the Hughes Tool Company, either orally or in writing delivery position substantially similar to those set forth in Defendants' Exhibit 103 for identification?

I am not referring to the delivery positions of the other airlines. I am thinking only of TWA.

A. Well, I can't remember it in that detail. These seem to fall in the same general time period.

[Tr. 2594] I have the impression that the 131 deliveries were finally made a bit better—were better than this. I don't recall specifically this specific schedule but it is the kind of thing—

Q. I am not asking if these were the dates that were contracted for. I am asking—

A. I am sorry.

The Special Master: Does this refresh your recollection?

The Witness: No, not in specifics.

Q. Does it refresh your recollection for example as to delivery that TWA received either directly from Boeing or through the Hughes Tool Company from Boeing an offer to make 707s available during the period from April 1959 to August 1959 and to make 331s available during the period from November 1959 to January 1961?

A. Well, the November date sticks in my mind. The January date does not.

Q. Do you recall receiving at or about the date of Defendants' Exhibit 103 for identification a proposed delivery schedule for the 120 and 320 Series?

A. Not specifically, Mr. Hayes.

Mr. Hayes: I offer in evidence Defendants' Exhibit 103 for identification.

[Tr. 2595] Mr. Sonnett: Objection. It is hearsay. The Special Master: Sustained.

Q. Would you look again at Defendants' Exhibit 103 for identification, Mr. Rummel, and tell us if the delivery positions that were actually negotiated for the 131s and the 331s were better than those set forth in Defendants' Exhibit 103 for identification?

Mr. Sonnett: That requires the witness to make a comparison between the document which is in evidence, their chart, and this. I don't see the point to that. If there is an argument to be made it can be made by counsel on the basis of his chart which is in evidence.

Mr. Hayes: The trouble with that objection is that 103 for identification is not in evidence and if we make the comparison then we will be told we are comparing something that is not in evidence.

Mr. Sonnett: If you compare the actual deliveries which are in evidence—

The Special Master: I think that would be an indirect way of putting it in evidence so I will sustain the objection.

Mr. Hayes: Off the record.

The Special Master: Off the record.

[Tr. 2596] (Discussion off the record.)

Mr. Hayes: On the record I will state that I have offered to Mr. Sonnett that if he wants to put in evidence documents received in the course of the Boeing production which set forth conversations between Boeing representatives and Mr. Hughes, I have no objection to their going in evidence.

Mr. Sonnett: Let the record reflect the fact that Mr. Sonnett would look forward to the examination of the Boeing witnesses, if any, with respect to the communications between Mr. Hughes and Boeing on this subject.

Unfortunately the inability to examine Mr. Hughes has precluded our getting into that subject matter earlier.

[Tr. 2642] • • • Q. Did Mr. Hughes, at the time of the negotiation leading up to the contract, tell you of any conversation he had with Mr. Allen respecting deliveries to Pan American, American and TWA?

A. Well, as I indicated before, Mr. Hayes, Boeing had made available from time to time delivery schedules for planes they proposed to sell to Hughes. I don't, as I sit here, recall if those were given through Mr. Allen. I suppose it is possible. I don't know.

Q. Would you please answer the question?

The Special Master: Read the question back. (The question was read.)

A. Well, I don't recall.

[Tr. 2643] Q. You have no recollection?

A. Not now, no.

Q. At the time Mr. Hughes gave you the instruction not to enter into change orders and to hold hands off because of some claim that might be advanced against Boeing, you were then aware that there had been preferences granted by Boeing both to Pan American and to American, were you not? You may not have known the details, just that there were preferences in deliveries that had been granted to them?

A. Well, I am sure we knew then, as we had all along, that American and Pan Am were getting ships before we were.

(Tr. 2644) Q. At the time that Mr. Hughes gave you this instruction which you said came to you indirectly, was it part of the instruction that you were not to take any action which would disrupt Boeing production and thus delay deliveries?

A. No.

Q. That was no part of the instruction as you recall it?

The Witness: Well, just to be really sure may that question be read, because—

The Special Master: Of course.

The Witness: —it sounds as if I might not have heard it right.

(The question was read.)

- A. My objection to the instruction was that that's exactly what would happen and that's why I thought it was self-defeating and I do not recall that being part of it.
- Q. You never recall Mr. Hughes saying to you in substance that he did not want any action of yours to be one which would delay deliveries?
  - A. Well, yes.
  - Q. He did say that?
  - A. Not at this time.
- Q. When did he say it? Was it when you complained [Tr. 2645] about the instruction?
- A. That's right. When I finally got Hughes and explained that things were starting to come to a grinding halt and that because of his instructions to which I had been in opposition all along I felt Boeing was rapidly approaching the position where they could claim that our inaction was too disruptive to their orderly production process, and that they could claim that because of our inaction deliveries either might be delayed or at least they could never be advanced. I wasn't sure what they would say.

And when I brought that to Hughes, Hughes wanted to know why I had not called that to his attention before. I reminded him I repeatedly made the effort to do so and advised his representatives to that effect. At that point he agreed that we should not proceed on the basis of earlier instructions but to try to restore things to normal as reasonably expeditiously as we could.

Q. And that nothing should be done to delay deliveries! Did he tell you that?

A. Well, Mr. Hayes, the delivery area was one in which I was not authorized to do anything at any point in time which would adversely affect deliveries as I have testified to earlier.

(Tr. 2646) Mr. Hayes: Would you read the answer, please?

(The answer was read.)

Q. But in this conversation that you are talking about with Mr. Hughes, did he specifically say to you that you were to do nothing which would delay deliveries?

A. I don't recall it with that degree of precision, Mr.

Hayes.

Q. How long, by the way, was this conversation you had with Hughes after you had received the instruction not to make change orders and so on?

A. I can't be sure, but I think it was—let me say it is my present impression, rather than a clear recollection, it was in the order from five to seven weeks or thereabouts.

Q. Did Mr. Hughes either at the time you talked to him or in part of the instruction which you received indirectly give as a reason for his instruction that he did not want any representative of TWA or the Toolco to take a position with Boeing which might interfere with the claim he planned to advance against Boeing?

A. Well, I didn't have the impression, and I hope I haven't given it in my testimony, that he specifically planned to lay a claim. My impression is that he wanted that area explored and to see whether or not claims [Tr. 2647] existed to the degree which would permit either threat of or mention of it or some use of it to advance our delivery positions during our negotiations.

Q. Whether he planned at that time to take action or to find the facts to determine whether he could bring an action or not, did he then give as a reason for the instruction that he wanted no contrary position to be taken by any Toolco or TWA representative at the Boeing plant?

A. Well, as I say, I don't recall it with that degree of precision, but the last thing I think that we would have undertaken was to do anything which would—tended to undermine that which we were then trying to accomplish, earlier deliveries.

Q. At the time this controversy arose was it known that Boeing was accelerating its production?

A. Well, the Boeing plan to have its manufacturing schedule for early planes in advance of contractual commitments was known I think, all along, and we knew it then.

ITr. 2679] • • • Q. In your prepared statement, Mr. Rummel, page 10, the paragraph beginning five lines from the bottom, you state the study, that is Annex D, shows the effect which timely placement of orders would have had in accelerating deliveries of jets to TWA if TWA had received equal treatment with Pan American and American Airlines, its major competitors, et cetera.

I want to know what you mean by the words "equal treatment."

A. What I mean is that the study attached as Annex D shows what would have happened had TWA, Pan American and American Airlines ordered at about the same time and had Boeing made an effort to equalize deliveries between the three airlines on an equitable basis and in [Tr. 2680] line with their policy.

Q. I want to know what you mean by the words "equal treatment."

Can you define those words for us?

- A. Well, by equal, I mean equitable.
- Q. What do you mean by equitable?

Mr. Sonnett: I think the witness has just pointed out that what he meant he set forth in Annex D.

Mr. Hayes: I know what he set forth in Anner

D but I am talking about his statement.

Mr. Sonnett: That is what he is talking about.
Mr. Hayes: I can read Annex D as well as any-

one, I hope.

A. I guess I'm at a loss to be any clearer.

# By Mr. Hayes:

- Q. Did you give effect to the larger number of orders that were given by one as against the other airline?
  - A. Certainly, yes, I considered the full orders.
  - Q. That was 20 for Pan American?
  - A. As exactly set forth, Mr. Hayes.
- Q. I think it was 25 for American or 30, I have IT. 2681] forgotten now offhand.

Take American. American ordered-

- A. 25.
- Q. —according to your Annex D 25 of the transcontinental 707s?
  - A. That is right.
  - Q. TWA ordered 15?
  - A. Yes.
- Q. Did you give American any priority throughout the period of delivery for ordering five more 707s of the 120 series than were ordered for TWA?
- A. Well, American was given a slight advantage over TWA on the 100 series during the early delivery period.

And, of course, Pan Am received planes before either-Q. I am talking about just American and TWA right now.

A. -American or TWA.

Q. Just American and TWA.

A. Well, there is an advantage during the early delivery periods shown to American Airlines.

Mr. Sonnett: When you answer, if you are referring to Annex A, will you make that [Tr. 2682] clear because the record does not indicate what you are looking at?

The Witness: Yes, I am sorry.

I am looking at pages 6, 7 and 8 entitled "Reallocation" of Annex D attached to my testimony.

Q. Did you give effect or any effect to the fact that American's order was placed one day before TWA's order?

A. Well, this reallocation, Mr. Hayes, is on the basis that we all ordered about the same time, and that our negotiations were conducted nearly simultaneously.

Q. Would you answer the question, please,

Rummel †

The Witness: Could I have the question?

The Special Master: Certainly.

(The question was read.)

The Witness: Not in preparing the reallocation.

Tr. 26983 • • • Q. Do you know how long negotiations went on between the Hughes Tool Company and Pan American before the contract was made in, I believe, July 1959, whereby with the consent of Boeing the Tool Company assigned the right to acquire six 707-331s to Pan American?

I am sorry. It was in June 1959 that the contract was made.

Do you know how long negotiations between Hughes Tool Company and Pan American went on before the contract [Tr. 2699] was made?

- A. No, not exactly.
- Q. You say "not exactly." What do you mean?
- A. Well, I mean I wasn't a direct party to those negotiations, and I can't be sure.
- Q. In preparing your prepared statement, did you make any effort to determine how long those negotiations continued?
- A. Well, like most aspects of the testimony, we used the best information that was available from almost all facets, including the best recollection I have, reviewed data available and the like, but I don't specifically recall the time span you are referring to as I sit here now.

[Tr. 2700] Q. You have no recollection of this, how long any negotiations continued, is that right?

- A. I can't be specific.
- Q. Why did you use the month of July 1959, when the minutes of the TWA board approving Mr. Thomas' consent were dated in June 1959, Defendants' Exhibit 54?

That information was certainly available to you, was it not, Mr. Rummel?

A. Yes.

I had attempted to determine the best deliveries from Boeing for six airplanes as soon as I understood that six were definitely being committed to Pan American.

There was an earlier proposal letter from Boeing which gave—which offered deliveries somewhat less attractive than those that were contained in this letter that preceded it. This particular letter is a result of a review conducted by Boeing after discussions with me along the line that I thought they would be able to do better.

I used this because it was the most current knowledge available at that time with respect to open positions at Boeing.

I might add—that's all.

Q. Do you want to add something?

[Tr. 2701] A. No, sir. I think that answers it.

Q. This attempt by you to find out open delivery positions, are you speaking about the time you were preparing your statement or are you speaking about 1959?

A. 1959.

Q. My question to you now is, is it because of the fact that Annex E happened to be dated in July 1959, that you used it as the date on page 12 of your statement?

A. Well, the reference on page 12 to July is in reference to Annex E.

The Special Master: "Is" you say?
The Witness: Yes.

Did you attempt in present

Q. Did you attempt in preparing your statement to find out what delivery positions would have been available to Pan American in June 1959?

A. Well, as I just indicated, Mr. Hayes, and I don't have the date at hand, the offering before this one, offered aireraft for subsequent delivery to the positions contained in the July 27th letter.

Q. Are you referring to the first sentence in Annex E, "We wish to amend and supplement letter of proposal 6-1100-2-591"?

A. That sentence refers to the earlier proposal that I just mentioned.

ITr. 27021 Q. When was that earlier proposal?

A. I don't remember the date, but I believe it was several weeks prior to—maybe a little longer to the July 27th letter.

Q. That is the proposal which according to your testimony had poorer delivery positions than those contained in Annex E, is that right?

A. Yes, and it was a result of a still earlier request to Boeing. It took Boeing some time to review what they

could to do and to develop the proposal letter.

Q. I ask you again in connection with the preparation of your statement, TWA Exhibit 2, while you were in touch during the course of your various conversations with Boeing, did you attempt to discover from Boeing what delivery positions would have been available to Pan American in June 1959?

A. I discussed with Boeing whether or not the information I had which is presented here represented the best they could have then done for Pan American, about that time period, and they indicated that it was.

Q. That was July 1959.

My question was did you ask Boeing whether in June 1959, better delivery positions would have been available to Pan American?

[Tr. 2703] A. I asked Boeing whether the delivery positions as represented by this letter were or were not the earliest that could be made—that could have been made to Pan American at the time that they picked up the Hughes' airplanes.

And, as I recall Boeing's statement, it was yes, this is about the best they could then do.

- Q. You did not ask them specifically what deliveries were available in June 1959?
- A. Well, Mr. Hayes, I might have. I just don't remember my sentence by sentence questions to Boeing. The sense of it was as I just explained.

I wanted to know whether we were fairly representing or had information here that was valid with respect to other—to the offer that had been offered to Pan American, and my impression from Boeing's reply is that it is.

- Q. If I recall your prior testimony correctly, it was to the effect that you did not know about the transfer of contract rights for the six aircraft to Pan American until it happened, is that correct?
- A. I believe that's correct. I knew that some discussions were under way but I didn't know a deal had been made until it had been made and I had been told.
- [Tr. 2735] • Q. If I recall correctly, you testified earlier on this cross-examination, Mr. Rummel, that you were not personally a great deal at the Convair plant; that your information came through Mr. Bew or Mr. Rourke. Do you recall that?
  - A. Referring to the fall of 1959, I think that is correct.
- Q. How much time did you spend over the years at the Convair plant?
- A. Well, I spent a great deal of time during the preliminary design and early contractual discussion phases.
- Q. No. I mean after the contract was made and production [Tr. 2736] started.
- A. I made occasional trips as conditions seemed to warrant. I can't tell you how many days I spent or exactly what percentage of time I spent at the plant.

- Q. Not even by years, say in 1957, in 1958?
- A. Well, not really. Anyway, it is a confused picture. There were several efforts to get to the plant. I found my self on ice for weeks at a time, wherein I was unable to proceed to the plant because of requests from Hughes.
  - Q. Was that in 1957?
- A. There was one—I don't recall this occurring in 1957. I do recall it occurring in 19—during 1960.
- Q. Take a year at a time. During 1957, about how much time did you spend at the Convair plant?
  - A. 1957 1
  - Q. Yes.
- A. I don't know. There were numbers of trips, Mr. Hayes, when we were establishing our office and reviewing the Convair progress, resolving various issues that arose.

My memory just can't-

- Q. Do you recall if you were there as frequently as once a month?
- A. I don't think it was—I don't think it averaged [Tr. 2737] once a month, no.
  - Q. How about 1958, about the same or not?
- A. In 1958—well, back to 1957 I suppose it could have been 12 trips, and it would have averaged, I am sure, more than 12 days a year, but I just don't remember in that particularity.

In 1958-I am not that sure of it.

Q. How about 19591

A. 1959, after I moved to New York, there were fewer trips on my part and more on the part of the Kansas City staff.

Q. How about 1960, how often were you at the Convair plant?

A. In 1960 I was there personally to a very limited extent. Hughes didn't want me there.

Q. Yes, you have told us that several times.

A. I am sorry.

[Tr. 2738] Q. When was the period he did not want you there?

A. I am not positive of the exact time there either, but it was during, I believe, the early—either late winter or early spring period.

Q. Were you there after the early spring period?

A. I was on my way there for about a month or so.

Q. Were you there, was the question.

A. If you are asking-

Q. Were you in the Convair plant? That is what I am asking.

A. No, I didn't make it.

Q. Were you in the Convair plant at any time after the spring of 1960?

A. Yes, I'm sure I've been there since the spring of 1960.

Q. And before the end of 1960?

A. Before the end of 1960?

Q. Yes.

A. I'm not entirely sure.

### A-901c

### Rummel-Recross

Q. Is it correct to state that your knowledge of what was going on at Convair in 1960 was not the result of personal observation but was based on what was reported to you by TWA representatives there?

[Tr. 2739] A. Not entirely.

Q. Will you explain?

A. Well, for example, I made a trip to San Diego to talk to Jerry Owens who was one of the Hughes' representatives at the time, but I didn't at that time set foot on the Convair property.

I passed by and saw planes on hand parked around the field.

During the time that I was on ice, as I put it, out there, I passed around the outskirts of the field in the vicinity several times. I didn't, as I recall it, actually pass through the Convair gates.

I flew in and out of San Diego on several occasions. Their plant is at the same airport and the field operations were quite visible.

And there was one trip where I inspected the status of our—that is Convair's production, but I can't fix the exact time now during 1960.

Q. How many days all told were involved in these various trips you just talked about where you walked around the Convair plant or drove around it or looked down at it from an airplane?

A. I was in—I don't know how many days. I was in the La Jolla area about three weeks or so as I recall it [Tr. 2740] during which time I was in touch with Hughes. Then

#### A-901d

### Rummel-Recross

on the side I was in touch with numbers of Convair acquaintances. It was during this period that I did what reconnoitering I could do.

[Tr. 2743] • • • Q. Assuming that it was produced by the Hughes Tool Company at Houston, have you any way of knowing where the Hughes Tool Company got it or from whom?

- A. Well, it seems pretty clear it came from the Hughes Tool Company contract.
- Q. I am not asking what seems pretty clear to you, Mr. Rummel.

I am talking about Exhibit R-14.

Do you know how it got in the Hughes Tool Company files?

- A. No.
- Q. Do you recognize any of the handwriting on it? The only handwriting I know is on the bottom of page 1 and the footnotes T and H on page 2, the date on page 2 and the word "concluded" on page 2.
  - A. I can't be sure of the handwriting.
- Q. You referred to this as an allocation. What is your basis for calling it an allocation?
- A. Well, the fact that the marks indicate which airplanes are to be delivered to TWA and which are to be delivered to Hughes.
  - Q. By serial numbers?

Tr. 2744] A. By delivery dates.

Q. You do not know what planes by serial numbers,  $d_0$  you, from this Exhibit?

A. No.

- Q. Are you by your statement suggesting that R-14 was prepared, whoever prepared it as a result of any agreement between TWA and the Tool Company?
- A. Well, I don't know that TWA agreed with this allocation. The dates are consistent with the total contract commitments.
- Q. That I am aware of and your statement makes crystal clear that it is consistent as I interpret the word consistent.

My question is, by your statement are you suggesting that R-14 sets forth the terms of an agreement between the Tool Company and TWA?

A. As I recall it, TWA's rights to procure the 880s wasn't finally established until December 31, 1960.

Q. That was not my question, Mr. Rummel.

I am asking what you meant by the statement I quoted to you on page 17 of your prepared statement.

Are you suggesting that R-14 memorialized an agreement that had been arrived at between the Tool Company and TWA?

[Tr. 2745] A. No, I'm not necessarily. I am suggesting that this is the allocation the Tool Company had come to with respect to the disposition of 20 of the 30 airplanes.

Q. On what do you base the statement that the Tool Company had come to that decision?

A. Well, for one thing we didn't know what specific airplanes we would be receiving, even after in many cases, December 31, 1960.

Q. What has that to do with Defendants' Exhibit R-14 which is dated September 4, 1959? Try to answer the question, please, Mr. Rummel.

A. Well, I don't recall a formal agreement between TWA and Hughes on this specific allocation.

Q. Or any formal agreement arrived at between the Hughes Tool Company and TWA on or about September 4.1959†

A. Well-

Q. Do you recall one at about that time?

A. No, I recall the opposite.

TWA was trying to get a definite understanding from Hughes and a commitment that it would receive Convairs pretty much throughout this period.

Q. What did TWA do in that regard?

[Tr. 2746] The Special Master: That's what I was going to ask.

Did you base your planning after September 4, 1959, on these delivery dates?

The Witness: Well, I—we moved to the 20 plane base for planning once it became crystal clear that there was no hope of—in the foreseeable future of getting more than the 20 airplanes.

I was in charge of jet planning as I indicated, and waited a period of time after I first heard of the reduction, during which time I tried to persuade Hughes Tool representatives and Hughes that we should have all 30 airplanes.

Once it became finally clear, then we moved over to the 20 plane base, and this was changed, the Jet Plans and Premises Manual, as a planning base at that time.

Q. Your testimony shows that was either in June or July 1959, Mr. Rummel?

A. Yes, well, the question of what planes TWA would get is one of the very difficult unanswered questions that we had that lingered even after December 31, 1960. There was latitude even then in the selection of specific airplanes by serial number.

ITr. 2747 Airplanes at Convair during the early part of 1960 were in various stages of completion. Some had been pulled aside and parked. There were some under armed guard.

Finally I think in February some time there was bailment.

The production line became so confused that during an extended period there wasn't any way to estimate reliably or know either when a full production in operation would be resumed or what the order of appearance of airplanes might be.

The Special Master: The trouble is it would appear that the allocation here is based on an unsigned, unidentified, undated document, that nobody knows where it came from. Isn't that the present state of the record?

Mr. Hayes: That is the present state of the record.

Mr. Sonnett: Except it was produced by the Hughes Tool Company in response to production.

Mr. Hayes: Sure it was produced by Hughes Tool Company. It was in their files. There were lots of TWA documents we produced from the Hughes Tool Company files.

ITr. 2748] Mr. Sonnett: This isn't the time to get into argument about this problem—

The Special Master: No, no, I am just wondering if my impression was correct—

Mr. Hayes: It is obviously correct.

The Special Master: —as to the state of the record. The significance may be something else again.

Q. Have you any way of knowing whether R-14 may have been supplied to the Hughes Tool Company by the Convair Aircraft Company?

I am referring now to the information under the column "30 Convair 880s."

- A. The allocation of these planes could hardly have come from Convair.
- Q. Anything that prevented Convair from suggesting an allocation?

Mr. Sonnett: Of Convair planes.

A. Convair's general position was that it wanted TWA to get 30 planes. It felt that reallocations involved to a degree Hughes competing with Convair.

It is just not reasonable to think that Convair would have suggested allocation.

- Q.- Did Convair tell you that Hughes was competing [Tr. 2749] with Convair?
- A. What I just said is my recollection of information from Dudley Digges.
  - Q. Did Dudley Digges say that to you!
- A. Dudley was not happy with the prospects that Hughes would have ten Convairs on hand which had to be disposed of to what Convair then viewed as potential customers.

Whether he used the word "competition," I can't remember.

- Q. You don't recall that?
- A. Well, I recall the impression, the gist of what was said.
- Q. You were acquainted with the Convair contract, were you not, at the time of this conversation with Dudley Digges?
  - A. The Hughes contract?
- Q. Yes. You had negotiated it, and you were aware of its terms, were you not?
  - A. Yes, I was aware of the terms of the contract.
- Q. Did you not know that under the terms of the contract the Hughes Tool Company would not assign its rights to any of the planes to any airline other than TWA without the consent of Convair?

[Tr. 2750] A. Oh, yes, I knew that,

- Q. Did you mention that to Mr. Digges?
- A. I don't remember it to that degree of particularity.

  Mr. Hayes.
- Q. I notice further that on R-14 there are type-written dates and then there are changes handwritten.

Do you know when or by whom the changes were made!

- A. I think this reflects the Hughes Tool Company position as of September 4th as to what airplanes it intended TWA to have.
  - Q. Now will you answer the question, Mr. Rummel?
- A. I think I indicated earlier I wasn't sure what individual had written this information in. I still am not.

[Tr. 2751] • • • Mr. Hayes: I plan to reproduce the next Jet Plans and Premises prepared after September 4, 1959 and dated October 2, 1959. We didn't know this would come up so we don't have it ready now. I shall have it ready at the next hearing.

Q. I call your attention, Mr. Rummel, to Exhibit R-5 attached to your statement, your prepared statement, the assignment of May 19, 1960, and I ask you if Exhibit R-5 contains the first formal agreement between the Hughes Tr. 27523 Tool Company and TWA as to which of the Convair 880s would be assigned to TWA.

Mr. Sonnett: I don't mean to be technical, but there is a provision in the form of agreement which is part of TWA R-3 between the Tool Company—

Mr. Hayes: Let me get it, please, Mr. Sonnett.

Mr. Sonnett: Yes.

Mr. Hayes: What page are you referring to?

Mr. Sonnett: Which is at page 3 under the heading "Article 2." It is in the annex.

Mr. Hayes: Page 3?
Mr. Sonnett: Yes.
Mr. Hayes: Article 2?

Mr. Sonnett: Page 3, Article 2, after the listing

of delivery dates.

Since the question calls for the witness' answer with respect to formal contracts, I want to point out that in that language, for whatever it is worth, it says, "Prior to the execution of the definitive purchase agreement referred to in Article 4 buyer"—being the Hughes Tool Company—'shall designate the aircraft by manufacturing [Tr. 2753] number to be delivered to buyer with due regard to delivery positions desired by Delta Airlines as an initial purchaser of Model 22 aircraft with buyer."

What I am getting at is, and I don't know what the words of any subsequent contract in this regard may be—

The Special Master: This was a Convair-Hughes contract?

Mr. Sonnett: Yes.

Mr. Hayes: No, as a matter of fact it is the preliminary agreement. It is not the formal contract.

Mr. Sonnett: That is correct. What I am suggesting here is that the form of the question might create some problems because the preliminary agreement apparently gave to the Hughes Tool Company the right to designate with due regard for Delta, whatever that means.

Tr. 2754 Mr. Hayes: Very interesting, but wholly irrelevant comment. My question was whether in fact the exhibit which plaintiff's counsel saw fit to attach to Mr. Rummel's prepared statement and which is designated R-5 was the first formal agreement between Hughes Tool Company and TWA as to what 880s were to be delivered to TWA. It has nothing to do with any deliveries to Delta at all.

Mr. Sonnett: What I am trying to suggest is that under the preliminary agreement between the Tool Company and Convair dated June 7, 1956, which is in evidence, the Tool Company had the right to designate which of the 40 aircraft it was going to get and which 10 Delta would get.

That's the point I am trying to suggest to you.

Mr. Hayes: You have made your point. It has nothing to do with the question.

I press the question.

# By Mr. Hayes:

Q. Can you answer it, Mr. Rummel?

Mr. Sonnett: This is R-5 you want the witness to look at?

[Tr. 2755] Mr. Hayes: R-5, yes. I thought Mr. Rummel knew it by heart.

- A. I believe it was.
- Q. In your previous testimony you made some mention of Convair tendering planes in the course of 1960 which were not picked up; do you recall that, Mr. Rummel?
  - A. Yes.
  - Q. When were those planes tendered in 1960?

Maybe I can refresh your recollection. Is it your recollection that the first was tendered by Convair and delivered to TWA through the Tool Company on May 18, 1960?

- A. That sounds about right.
- Q. How many more airplanes were tendered by Convairf
- A. Well, a good many were tendered in the sense that they were offered for final ground inspection and acceptance flying which was an immediate prerequisite to contractual acceptance of the airplanes.
  - Q. The question was how many.
  - A. Well, I'm trying to explain.

Convair offered these planes initially as they could considering that some planes were being set aside, but as time went on airplanes were abandoned in [Tr. 2756] various stages of completion.

So, the later ones were not, in fact, tendered for acceptance because they weren't completed to that point.

The exact number of planes which were formally tendered I am not sure of. I think that in a few cases it got to the point where Convair would make a record to at least their satisfaction of having tendered in order to lay a base for claims of their own for delays of acceptance.

Further, Hughes himself was personally involved with instructions and indeed he made several trips to San Diego himself, and the Hughes Tool representatives were on the scene in San Diego, and involved in surveying, giving surveillance to and participating in discussion with Convair on various matters.

Not knowing exactly what all went on in that particular area, I can't give a definite answer, but I can give you what I have by way I hope of explanation.

Q. That was a very lengthy answer.

The only question was how many planes were tendered. It was quite a speech you got in, Mr. Rummel.

Mr. Sonnett: Well-

Mr. Hayes: It was. You can't deny it.

(Tr. 2757) Mr. Sonnett: You know we can get along a lot faster if we don't waste time in colloquy, I think. I think that was uncalled for.

Mr. Hayes: That is an excellent rule for you to follow, Mr. Sonnett.

Mr. Sonnett: You like to be—I won't say it. It only wastes time. One-sided colloquy. It takes two to tango.

The Witness: If-

# By Mr. Hayes:

Q. Are you going to say some more? Go ahead.

A. Well, I was going to say that Convair made it clear subsequently that it was claiming damages to varying degrees on 19 airplanes of the 20, because of failure to take delivery on them.

So, in that sense 19 were in the broad category of delayed acceptance, but I don't think as I've tried to explain, and I will try not to speak at length, Mr. Hayes, they were all

technically tendered as being completed and ready for acceptance.

This is what I was trying to explain.

- Q. In 1960†
- A. Yes, during 19-well-
- Q. Is your testimony that during 1960 TWA having [Tr. 2758] acquired one plane on May 18, 1960 Convair later tendered nineteen 880s for acceptance? Is that your testimony or not?
  - A. No, sir, that is not what I said.
- Q. I am trying to find out how many airplanes were tendered by Convair for acceptance in 1960 over and above the one that was acquired by TWA.
- A. Well, this is a—this was a very confused and complicated situation at the time, and the answer isn't that simple.

For example, Convair could not have tendered airplanes it had bailed to Hughes or those under guard by Hughes. We couldn't even approach the planes.

And what I was trying to explain is that they had tendered a series for ground inspection and acceptance. And when things became so snarled up on the line that they started laying people off and the airplanes became delayed, they didn't complete the planes, some of them to the point where they could technically tender them in the sense they could say "Well, here is an airplane for delivery."

But they later claimed, nonetheless, damages on all of the 19 which originally were scheduled for delivery in that period of time.

[Tr. 2759] Q. Did I ask you anything about what Convair's claims were?

A. Well, I can't give you the exact number. I can only describe—

Q. I am trying to find out, and search your recollection, please, as to how many 880s Convair tendered for delivery during 1960. It is a very simple question.

The Special Master: You mean completed?

Mr. Hayes: Tendered for delivery, whatever it
meant to the witness.

The Special Master: I think he was trying to explain that.

Mr. Hayes: He is giving quite a lot of explanation.

The Special Master: He did not know what an unfinished plane would qualify as, under your question.

Mr. Hayes: Of course not. It was not tendered if it was unfinished.

Mr. Sonnett: That is the problem.

The Special Master: Under that explanation, I would say the question boils down to how many comleted planes were tendered, if you know?

The Witness: Well, if I could further—[Tr. 2760] and honestly, I am not trying to belabor this, Mr. Hayes. I am trying to answer your question.

Q. I wish you would.

A. But I take it the question is how many were tendered—

Q. For acceptance.

A. —to Bew rather than to Hughes or the Hughes representatives?

Q. I don't care to whom they were tendered.

A. Then I can't tell you. I don't know.

Q. You have talked about in the past planes that were tendered. I am asking you what planes you were talking about, how many of them?

Mr. Sonnett: You ought to give the witness an opportunity to tell you what he does know on the subject.

Mr. Hayes: He has had ample opportunity to answer a simple question.

Mr. Sonnett: It seems simple to you because you are not as well informed about the problem as the witness.

Mr. Hayes: Maybe I am better informed at the moment.

Go ahead, Mr. Rummel.

[Tr. 2761] The Special Master: It now stands completed planes to either TWA or Hughes, as I understand it. I don't want to take the words out of your mouth.

Mr. Hayes: That's right. Sure. Thanks a great deal. Maybe that will help us.

A. Well, the impression I have on the planes which Hughes placed underguard was—or is that the guards just simply showed up, and I honestly don't know. I don't have the impression those were ever tendered as such for anybody. And later some of these were put under bailment by Hughes.

Now, insofar as the planes which were tendered in the sense that Bew was advised to—that they were ready for final acceptance, that does not, I think, answer the question that has been asked.

I guess the answer is that in specific numbers, I can't say at the moment.

Q. You don't know, is your answer, isn't it, Mr. Rummel?

A. I don't know everything that went on certainly in the Hughes area at that time, so I can't—

Q. You specifically don't know how many planes were tendered, do you, for delivery?

[Tr. 2762] Mr. Sonnett: Are you asking for a further answer?

Mr. Hayes: I am asking for an answer which I haven't gotten yet. I've gotten several speeches having nothing to do with the question.

Mr. Sonnett: The difficulty with the question is it is highly ambiguous because the problem is whether the planes were tendered for acceptance flights by or on behalf of the Tool Company or whether counsel is talking about the acceptance flights having been performed, then they were tendered by Convair under the contract.

It was a requirement that there be acceptance flights before there could be a technical contractual tender.

That's the area of the problem.

Hence, we have the difficulty that the witness is having.

A. I could perhaps add this, Mr. Hayes, hoping it will help clear the air.

Our position with Convair that I argued later was that airplanes were not under strict terms of contract in fact tendered until after our own acceptance flight had been completed.

ITr. 2763 Making available for ground inspection which is a preliminary to acceptance flight, we argued it did not constitute tendering in the true sense.

Convair completely disagreed with that view.

Now, all of our acceptance flying activities had to be cleared with Hughes or the Hughes office. We were not authorized to proceed with such clearances.

Since we couldn't proceed with our acceptance flying, because if we did and if the airplane was shown to be functionally satisfactory, we'd have been obligated to take them, we didn't proceed with either ground inspection or acceptance flying without clearance from the Hughes office.

So there is some question in my mind as to—at this stage at least, as to what in the legal sense tendering was. There are two sides to this question.

Mr. Hayes: He adopted your suggestion beautifully, Mr. Sonnett. Nice piece of coaching.

Mr. Sonnett: If you ask the witness questions of legal conclusions we get into problems.

Mr. Hayes: I will now ask a simple question and see if I can get an answer and it is going to be my last attempt.

[Tr. 2764] Q. How many planes did Convair tender for acceptance, be they acceptance flights, payment, what have you, during 1960?

Try to answer that one, Mr. Rummel, without giving us a speech.

Mr. Sonnett: I object to the form of the question as well as to the tone of counsel's voice, and I object to the fact that even now he does not put the question in such form as to enable the witness to answer it simply.

The Special Master: Overruled.

Mr. Sonnett: It is an incomplete summary of what the witness has said in terms of this problem of tender.

A. I don't know what to add to what I've already said, Mr. Hayes.

Q. You cannot give me anything further in answer to

# A. No, sir, I can't.

The Special Master: Let me try one.

Mr. Hayes: Fine. I wish you luck.

The Special Master: How many did Convair later claim it had tendered?

The Witness: Oh, all 19.

[Tr. 2765] Mr. Hayes: In 1960 he said one.

The Witness: I said they later claimed that they were—they claimed damages on account of delay in delivery of all 19 airplanes, and these were in different categories, some of which included storage costs, and I think the storage costs—well, I'd have to look it up now, but maybe seven or eight planes. They attempted to tender those which they had completed and that was all of them up to the time they saw fit—

The Special Master: How many did they tender!

The Witness: Maybe seven or eight.

The Special Master: Did I understand you to say, Mr. Rummel, that of the planes that Convair claimed to have tendered during this period, seven or eight were claimed to have been tendered in completed form?

The Witness: Well, I can't—that's an approximate number which as I recall it they attempted to tender for purposes of ground inspection and subsequent flight testing. It could have been a few more or less. But in the end, as I say, they claimed damages for all of them.

# Tr. 2766 By Mr. Hayes:

Q. As to whatever the number may be as to the planes that were tendered, do you know why they were not picked up, why delivery was not accepted?

- A. We didn't proceed with the flight testing because we hadn't been cleared by Hughes to do so.
- Q. Do you know why Hughes didn't clear the flight testing!
- A. No. I had several impressions at the time. I can't say.
- Q. Did TWA have the funds to pay for the planes at that time?
- A. If you are asking had TWA completed its financing, I don't believe so.
- Q. Aside from its financing, did it have the funds to pick up the planes at that time?

Mr. Sonnett: Objection as outside the scope of the issues involved before the Special Master.

The Special Master: Do you know?

The Witness: I don't know how much money we had, but I don't think we had enough to buy 20 airplanes. I am sure we didn't without some financing.

ITr. 2767 Q. Do you know whether TWA had enough money to buy seven or eight airplanes from Convair?

- A. No. I recall Convair trying to work out leases.
- Q. I am talking about buying, Mr. Rummel.
- A. I just don't feel qualified, Mr. Hayes, to comment on how much money we had at that time.
  - Q. You do not know, is that it?
- A. No, I can't tell you exactly how much we had. This wasn't my area.
- Q. Do you know whether the Tool Company lacked the funds to pick up the planes as they were tendered for delivery!
- A. I had that impression at that time as one of the possible reasons.

Q. Where did you get that impression?

A. Primarily from Raymond Cook and Raymond Holliday.

ITr. 2783 • • • Q. You mentioned from time to time, in response to questions—I did not ask for the information—that the Hughes Tool Company placed guards around certain planes at the Convair plant and that bailments of certain planes were made to the Hughes Tool Company.

Mr. Sonnett: I object to the form of the question. It incorrectly describes the record.

The Special Master: So long as the comments are on the record, I don't think any damage will be done by proceeding.

# By Mr. Hayes:

- Q. How many planes were involved in this placing of guards around the plane by the Hughes Tool Company!
  - A. I believe at least four, Mr. Hayes.
- Q. When you say "at least four," do you mean your recollection is that there were more than four or do you mean that there were four?
  - A. I mean I recall four-
  - Q. You recall four?
- A. (continuing)—but I am not able to testify [Tr. 2789] whether it was only four.
- Q. How many airplanes were bailed to the Hughes Tool Company by Convair?
  - A. A total, I believe, of four.
- Q. Do you know if they were the same planes that had been placed under guard?
  - A. I believe they were, Mr. Hayes.

- Q. Do you recall when the Hughes Tool Company first placed guards around any of the 880s?
- A. I believe it was during 1960. I am not sure of the exact date.
  - Q. I ask you if you recognize it as a report of Mr. Bew.
  - A. I recognize Bew's signature.
- Q. I direct your attention to the second paragraph below the list of dates and I ask you if that refreshes [Tr. 2790] your recollection as to the date when the Hughes Tool Company personnel first roped off planes.
- A. Well, apparently I didn't remember correctly. This says that as of December 18, 1959, Aircraft Nos. 6 and 8 had been roped off and secured by Hughes Tool Company personnel.
- Q. It also states, does it not, that production of those two stopped on December 5, 1959?

## A. Yes.

Mr. Hayes: I offer in evidence Defendants' Exhibit 122 for identification.

Mr. Sonnett: No objection.

The Special Master: Received.

Tr. 27971 • • • Q. As to these planes that were roped off, what physically happened to them? Where were they? The four 880s I am talking about.

- A. Well, they were roped off on the Convair grounds.
- Q. Were they taken out of whatever production lines may have existed there?
- A. I'm quite—well, I believe they wound up being roped off in the outside area which was a work area.

I think for a while one was inside and I believe it was finally moved outside.

[Tr. 2798] • • • Q. Was any work done by Convair on the four 880s that were roped off or later bailed or whatever it was? I mean during the period of roping off or bailment.

- A. No, I was advised that no work was done on the planes.
- Q. Do you know how long they remained roped off or bailed?
- A. I'm not entirely certain, Mr. Hayes. I believe it was —no, I'm not certain.
  - Q. Was it a matter of months, weeks, what?
  - A. Oh, months and months.
- Q. When you say months and months, do you mean years?
- A. Well, I think it was—I am not certain when they came out of bailment. I think it was probably during 1961.
  - Q. Are you sure of that?
  - A. That's why I said probably. I'm not really sure.
  - Q. You are not sure as to when?
  - [Tr. 2799] A. I just said I don't know the exact date.
- Q. You mentioned earlier this morning in response to a question I put to you with respect to change orders that there was an amendment to the contract made by the Tool Company changing the delivery dates.

Do you recall that answer?

- A. Yes, sir.
- Q. Were you referring then to Amendment 4 entered into on March 2, 1960?
- A. I don't remember the number as I sit here, Mr. Hayes.

Q. There has now been marked in evidence as Defendants' Exhibit 68 the purchase agreement between General Dynamics and the Hughes Tool Company and the amendments thereto.

I call to your attention Amendment No. 4 to the contract which is part of that exhibit and I ask you if that is the amendment as to changes in delivery position to which you referred this morning.

A. I believe so, yes.

[Tr. 2802] • • • Q. When did you learn that there was an Amendment No. 4?

- A. Going through papers relatively recently with counsel, this came to my attention.
  - Q. Going through what papers?
  - A. Miscellaneous papers.
  - Q. I am sorry!
  - A. Just miscellaneous papers.
  - Q. Can you describe them better than that, Mr. Rummel?
  - A. No.
- Q. You cannot identify what papers you are talking about?
- A. No. I was reading some data to refresh myself not knowing what areas you might inquire into and this came up.
- Q. Was that the first time you ever heard of Amendment No. 4?
- A. No. It recalled to me that I was advised of the change in deliveries shortly after it had been made by the Hughes Tool people.
- Q. Did this going through miscellaneous papers ITr. 28031 with counsel take place after we had offered in evidence the complete contracts with Convair?

A. It could have, Mr. Hayes. I'm not really sure of that timing, so many things have happened.

Q. Was it called to your attention that your copy of the contract had an amendment missing which the defendants had now supplied?

Mr. Sonnett: I object to the form of the question.

The fact is that TWA files did not contain a copy
of this document.

Mr. Hayes: Wait a second, Mr. Sonnett. Let the witness answer.

Mr. Sonnett: Just a minute.

You are asking about conferences with counsel. I have not stopped you. The particular document here is produced by the Hughes Tool Company at Houston to counsel.

The fact is that the TWA contract file on this did not contain a copy of Amendment 4.

Mr. Hayes: If Mr. Sonnett wants to take the stand I am perfectly willing to have him take the stand. I move to strike his remarks as completely improper.

[Tr. 2804] Mr. Sonnett: The witness already responded to this subject matter and has covered it, I think, in substance.

The Special Master: What is the pending question?

(The question was read.)

The Special Master: You may answer that.

A. Yes, I believe that was the sequence.

Mr. Hayes: May I see the copy you have in front of you, Mr. Sonnett?

Mr. Sonnett: Surely.

Q. Mr. Sonnett has produced a copy here which you had before you, Mr. Rummel, of Amendment No. 4 which purports to contain the signatures of Mr. Naish on behalf of General Dynamics and Mr. Holliday on behalf of the Hughes Tool Company.

At the time you were preparing your prepared statement, did you make any inquiry to determine if a signed copy of Amendment No. 4 was in anyone's possession?

A. Well, as I've already indicated, we tried to find at the time this work was initially done all of the amendments and contract data that was available to us.

Q. Who is "we"?

A. Myself, Strohm, and I believe counsel made the same effort.

ITr. 2805] Q. Did you call to counsel's attention that there was no Amendment No. 4 in the documents attached to your prepared statement relating to the Convair contract, that you had a recollection of having been advised of such an amendment at or about the time it took place, and did you ask counsel if counsel had a copy of such amendment?

Mr. Sonnett: I will object to this. I think it is going pretty far on the subject. It is basically immaterial.

The Special Master: See if I am correct.

I think Mr. Rummel testified he did not know about there being an Amendment No. 4. He knew about the delay in the delivery dates.

Mr. Hayes: That's right. He knew about the agreement as to the deliveries at or about the time the agreement was made. That's what his testimony is.

The Special Master: The question is-

Mr. Hayes: The question is knowing all that, and knowing that Amendment 4 was missing from this batch of documents, did he ask counsel where Amendment No. 4 could be found.

A. Well, as I said, I recall discussing this with ITr. 2806 Strohm and reviewing the documents with counsel. I don't remember specifically putting that question to counsel.

I don't think at that time I recognized what Amendment 4 was.

- Q. Did you review these contracts before they were attached to your statement, Mr. Rummel?
  - A. Well, of course.

Q. All of them?

A. Yes, certainly I looked at the documents.

Q. Knowing that there had been an agreement of which you had been advised of a change in the delivery dates, did you note that no such agreement was included in the amendments attached to your statement?

A. Well, as I indicated, I don't—I didn't recall what Amendment 4 was or really anything about it until it came to my attention recently.

Q. My question did not ask you about Amendment 4 as such.

Mr. Hayes: May we have the question again, please?

(The question was read.)

A. What I am trying to make clear is, and I hope this is responsive, I don't remember at the time the [Tr. 2807] attachments to my testimony were put together remembering what Amendment 4 was.

We looked for-we searched the file to be sure the data

was complete.

- Q. You did remember that there was some agreement changing delivery dates? Forget the number now.
  - A. No, I don't think I did then.
  - Q. You do not think you remembered it at the time?
  - A. No, sir, I don't.
- Q. You had forgotten that you had been advised of such an agreement in 1960?
- A. I don't believe I remembered at that time.
- Q. The only reason you remember it now is because the complete set of documents was called to your attention, is that your testimony?
- A. Well, I've already indicated how it came to my attention.
- Q. Aside from the four aircraft that were roped off or bailed to Hughes Tool Company, were there any other aircraft that were pulled off the production line and parked outside by Convair in early 1960?
- A. Yes, numbers of other airplanes were set aside during 1960 in a semi-completed state.
- Q. What do you know with respect to that setting [Tr. 2808] aside of other airplanes?
- A. Well, this occurred progressively after we were unable to move forward with final inspection and acceptance flights on those airplanes that had been completed.

Convair gradually reduced its working force, stopping certain overtime shifts first, and then stopping finally weekend work, and finally laying off personnel.

Q. That all came later. I am addressing myself to early 1960 and specifically to March 1960.

The Special Master: I thought you said the whole year 1960.

The Witness: So did I.

Mr. Hayes: I said early 1960 I thought. I meant to say early 1960. Maybe it sounded like all of 1960. The Special Master: Yes.

Mr. Hayes: Specifically March 1960.

A. I can't give you a precise report honed that fine.

Mr. Hayes: I ask that there be marked for identification—I guess it is a TWX—I am not sure—dated March 14, 1960 from Bew to Rourke as Defendants' Exhibit 126.

(TWX from Bew to Rourke dated [Tr. 2809] March 14, 1960 marked Defendants' Exhibit 126 for identification, as of this date.)

Mr. Hayes: Referring to a copy of a wire sent to R. W. Rummel.

Q. Do you recognize it, Mr. Rummel?

A. It appears to be a wire from Bew to—I guess it is a teletype from Bew to Rourke—

Q. Copy to you.

A. —dated March 14, 1960, and it appears to advise Rourke—it provides Rourke with a copy of the wire that was sent to me.

[Tr. 2810] Mr. Hayes: I offer in evidence Exhibit 126.

Mr. Sonnett: No further objection.

The Special Master: Received.

Q. Was Defendants' Exhibit 126, so far as you know, the first information you had that Convair had parked planes outside and was putting few man labor hours on their construction so far as you can recall?

A. I don't believe so.

- Q. You had information to that effect before that?
- A. I think so.
- Q. The references there to Nos. 5, 6 and 9, are those references to so-called roped-off planes, do you know?
- A. Well, I believe, Mr. Hayes, that by the time the planes were moved across to Harbor Drive, they had been placed under bailment. I think it was about that time they went under bailment.
- Q. Whether it was roped off or bailed, those are the planes you are referring to as the planes that had been roped off or bailed to Hughes Tool Company? It [Tr. 2811] mentions three of them at that time.
  - A. He talked about four.

The Special Master: Four of them.

Mr. Hayes: Pardon me. That's right. I am sorry.

- Q. Four of them, that is right.
- A. It actually mentions seven planes.
- Q. Were 13, 14 and 15 part of the planes that had been roped off or bailed to Hughes Tool Company?
  - A. I don't believe they were.

Mr. Hayes: I ask that there be marked for identification as Defendants' Exhibit 127 memorandum from Mr. Rummel to Mr. Thomas dated February 8, 1960, copies to Messrs. Cocke and Leslie, subject, Convair 880 integration into TWA service.

- Q. Will you read it please, and tell us whether you identify it as a memorandum you sent to Mr. Thomas or about the date it bears?
- A. I recognize it as a letter I sent. I note [Tr. 2812] this is an unsigned copy, however.

Mr. Hayes: I offer it in evidence.

Mr. Sonnett: No objection.

The Special Master: Received.

Q. I direct your attention, Mr. Rummel, to the fourth page headed "Why has Convair 880 airplane program been delayed."

Do you have it before you?

- A. Yes.
- Q. And to the second paragraph "Setting aside the three now two aircraft has not adversely affected the Convair production line. In fact, this may have helped materially" et cetera.

Is that reference to the three now two aircraft set aside a reference to the Hughes Tool Company aircraft that at that time had been roped off?

A. I'm not sure, Mr. Hayes.

Mr. Hayes: I ask that there be marked for identification as Defendants' Exhibit 128 a communication dated April 7, 1960, signed by Mr. Rourke to Mr. Digges at Convair through Mr. Bew with copies to Messrs. Bayless and Rummel.

ITr. 2813] ••• Q. Would you look at it, please, Mr. Rummel, and tell us if you can identify it?

A. I recognize Mr. Rourke's signature.

Mr. Hayes: I offer it in evidence.

Q. I call your attention particularly-

The Special Master: Just a moment.

Mr. Sonnett: I am trying to look at this. They are poor copies.

Mr. Hayes: Yes, they are horrible copies, Mr. Sonnett. I agree.

Mr. Sonnett: No objection.
The Special Master: Received.

Q. I call your attention particularly, Mr. Rummel, to the last paragraph, in Defendants' Exhibit 128.

Would you read it, please, and indicate when you have done so?

The Special Master: On page 2? [Tr. 2814] Mr. Hayes: On page 2, yes.

- A. I've read it.
- Q. Was Mr. Rourke's complaint in that paragraph as to what he apparently deemed to be lack of proper communication anything that contributed to delay because of rework or changes that might have been necessitated had Convair gone ahead without prior consultation with TWA?
  - A. No, I don't-not delay in delivery of planes.
  - Q. Delay of some other kind?
- A. Well, some of the—I will say part of the complaint did relate to making some improvements in the airplanes and in cases when corrective engineering couldn't be included prior to airplane delivery we would try to work out ahead of time arrangements which would permit retrofitting those items we felt were desirable after delivery.
- Q. Mr. Rourke's letter is concerned with different kinds of flap settings. What is a flap setting, by the way?
  - A. It relates to the angular position-
  - Q. It relates to what?
  - A. The angular position of the wing flap.
- Q. Referring to different degrees, and expresses ITr. 2815] dissatisfaction of the one that Convair chose, insisting on another one.

Do you recall what happened? Were changes made as a result of the Rourke protest?

- A. Well, I think what Rourke is talking about is the fact that Convair wanted us to pay for the information.
  - Q. Did he mention that-
  - A. Yes.
  - Q. —that you can find in Defendants' Exhibit 128?
  - A. Yes.
  - Q. Where is that?
- A. First sentence. The first sentence of the last paragraph.
  - Q. Yes. Was the change effected?
- A. I don't remember now, Mr. Hayes, what this flap thing was.
- Q. You have no recollection as to what happened in this particular controversy?
- A. I remember that we were finally satisfied with the take-off flap setting, but I don't recall this particular incident.
  - Q. Do you recall whether it was a 30° flap setting? ITr 28161 A. I'd be guessing now.
  - Q. You do not have any recollection?
  - A. You mean what we wound up with?
  - Q. That is right.
- A. I don't recall now, no. I have to look at the flight manual.
  - Mr. Hayes: I ask that there be marked for identification Exhibit 129 a teletype, I suppose it is from J. William Bew to Trans World Airlines, 380 Madison Avenue, dated April 13, 1960, dated as received April 30, 1960.

- Q. I ask you if you recognize it, Mr. Rummel.
- A. I've read it.
- Q. Do you recognize it?
- A. Well, it appears to be a wire or a teletype by Bew to New York. I don't specifically recall it.

Mr. Hayes: I offer it in evidence.

Mr. Sonnett: No further objection.

The Special Master: Received.

Tr. 2817 ••• Q. In the last sentence of Defendants' Exhibit 129 Mr. Bew states:

"No man hours being expended on parked Nos. 13, 14, 15, 18 and 19."

Those were not, were they, the Hughes Tool Company guarded planes to which he refers in the sentence above?

- A. The sentence above refers to the Nos. 5, 6, 8 and 9.
- Q. That is right. Those were the guarded Hughes Tool Company planes, were they not?
  - A. That's what this says.
- Q. How about the sentence to which I directed your attention, the very last sentence?
- A. Well, I don't recall 13, 14, 15, 18 and 19 being under armed guard like the others, if that's what you meant, sir.
- Q. Do you know the reason why Convair was putting in no work on five airplanes?
- A. Well, this is the—reflects the general situation I testified to earlier, when they gradually withdrew because of inability to make deliveries.
- Q. They were not due to make any deliveries by ITr. 28181 April of 1960, were they?

- A. Well, there was a great deal of work preparatory to delivery, Mr. Hayes, that they had not been able to complete.
- Q. Have you any other explanation as to why Convair had parked five planes and was putting no work in on them!
  - A. No.
  - Q. TWA did not ask them not to work on them, did it!
  - A. Certainly not.
- Q. Was this Convair's decision to park them, so far as you know?
- A. Well, Convair was manufacturing the planes and exactly under what circumstances the decision was made to park them I couldn't testify to.
- Q. I am not asking you that. It was the decision of someone in Convair to park these planes, these five planes referred to by Bew.

The Specialy Master: You are asking that?

# A. Is that a question?

Mr. Hayes: Yes.

The Special Master: Was it a decision?

[Tr. 2819] Mr. Hayes: Of somebody in Convair to park these five planes on which no man hours were being expended.

The Witness: I don't know.

- Q. Did you take any action by way of protest against Convair not working on certain planes?
- A. Well, I was in touch with Convair people in an effort to persuade them to move ahead with production, and also in touch with Hughes Tool Company personnel trying to urge them to persuade Convair to move ahead with production.

Mr. Hayes: I ask that there be marked for identification as Defendants' Exhibit 130 telegram or teletype—I don't know which it is—from Mr. Bew to Mr. Rourke dated May 27, 1960, setting forth a copy of a wire sent the same date to Mr. Rummel.

Q. I ask you to tell us if you recognize it, Mr. Rummel.
A. It reads like a Bew wire.

Mr. Hayes: I offer it in evidence.

[Tr. 2820] Mr. Sonnett: No further objection.

The Special Master: Received.

Q. Mr. Bew refers in Defendants' Exhibit 130 to parts shortages and inadequate manpower.

Were you aware of Convair suffering from parts shortages in the production of the 880?

A. To the extent that it existed, I think yes.

Q. Were you aware of Convair spending inadequate manpower in the off station final assembly?

A. Well, it was our position that they should not have pulled back and they should not have set airplanes to one side, but should have continued at full pace to honor the contract.

Q. Do you mean by that that you were aware of inademate manpower in off station final assembly?

A. I'm aware that our views were that they should have put more men, assigned more men to this project at that time, and that they should not have pulled them off.

Q. Did an accident take place to one of the 880s delivered to Delta while it was on a training flight?

A. Yes.

[Tr. 2821] Q. Does the date May 23, 1960, accord with your recollection as the date of the accident?

- A. Well, I think it was during latter May. I don't doubt that.
  - Q. Were people killed in that accident?
  - A. The crew, yes.
  - Q. Did that accident cause concern to TWA?
  - A. Yes, of course.
- Q. What, if anything, did TWA or did you personally do, let us say, after you learned about the accident which resulted in the killing of a crew on a training flight?
  - A. Well, several things.

I had long discussions with Hughes at that time. I sent a man to observe the CAB accident investigation after calling Delta and having their concurrence that an observer would be welcome.

We reexamined in detail numbers of airplane systems, all areas of suspect and numbers of areas not in direct suspect, but which were called to our attention through having examined the other ones.

We ran one flight test, even though Mr. Hughes requested that we not do it. We did, in short, the kind of things that we usually do following an [Tr. 2822] accident.

- Q. Was Convair concerned about this accident, do you recall?
- A. Well, I'm sure Convair was concerned in the sense they were more than slightly interested in knowing the cause and whether or not, depending upon the cause, further development or redevelopment of the planes would be required.
  - Q. What was determined to be the cause!
- A. Well, final determination of causes, I think, are formally issued by the CAB in accident reports in usually a very appreciable period after the accident occurs.

And frankly, exactly what that report said as to the cause I'm not certain.

The control of the plane was lost shortly after it left the ground, and I'm speaking as to the reasons the CAB ascribed to that loss of control. I don't remember specifically what they said.

Q. As a result of the investigation that you and any others in TWA or the Tool Company who may have inquired into the causes, was any conclusion reached as to what the cause was without waiting for the final official report?

[Tr. 2823] A. Mr. Hayes, we took action in a number of areas which we viewed as possible causes without waiting for it to be positively determined what the precise cause of this particular accident was. This is one of the values of accident investigations.

Q. When did you take that action, how long after the crash in the areas to which you referred?

A. Very shortly afterward.

Q. How long!

A. Well, I'd say within a matter of weeks, maybe sooner. This was done by my sending Mr. Rourke and some others to San Diego, even though at that time Hughes had requested that I not go to San Diego.

Q. Would you tell us now what action you did take?

What changes did you bring about?

A. Well, about that time we pressured Convair unofficially-I say that because it was contrary to Hughes' instructions—to make changes in the hydraulic system, including, I believe, changes in the pump.

This was partly because the operating record of the training plane in this respect was very poor, although I don't recall any proof that that did contribute to the Delta

sendent.

I think we required a reexamination of the CTr. 2824] flap control system with respect to the rate of actuation of the flap, if I recall it correctly, and frankly I am a little vague on some of these details now, but with one engine out, one pump out.

As I say, we ran flight tests to explore some low speed regimes with engines out. This was done at altitude.

Q. Anything else?

A. Well, other things were reviewed and discussed, including the significance, if any, of the heart condition of the pilot. I remember long discussions with Hughes along that line.

Q. You say you pressured Convair to make changes in the hydraulic system, something about pumps, and re-examination of the flap control system.

Were the changes that you pressured Convair to make

A. Yes, those of significance were made. The hydraulic system pump change was one we wanted whether or not, and one we had raised with Convair prior to the accident. We had wanted it irrespective of the accident.

Q. They had been resisting you previously, is that what you are saving, or isn't it?

A. It was a case that they resisted for a while, ITr. 2825] that particular change.

The rapidity with which they could make the change as I recall it involved availability of the new pumps which were from an alternate vendor.

And what we were trying to do was to have the pumps put on the planes that we expected to receive first, and Convair had the problem of wanting to put them on the airplanes that would be delivered first.

Q. How long was it after the date of the accident that you succeeded in persuading Convair to make the changes you wanted?

A. Relatively—a few weeks, as I recall it. I don't recall the exact time. It took us a while to analyze it and a little while to prevail.

It was very difficult, of course, to work with Convair then because Hughes had asked that we stay away from Convair during this period.

- Q. You have told us that three times although I never asked you.
  - A. Well, it relates-
  - Q. Be sure to get it in, Mr. Rummel.

Mr. Sonnett: You don't want to keep it secret, do you?

Mr. Hayes: No. I don't mind it at all.

# Tr. 28281 • • • Examination (cont'd) by Mr. Hayes:

Q. You referred, Mr. Rummel, to the hydraulic system, the pumps and the changes that were made.

Did the changes with respect to the hydraulic system and the installation of new or different pumps cause delay?

A. No, I don't think so. To the extent this was done at Convair, it was done during the period that the airplanes were being delayed.

The Special Master: Delayed by other causes, you mean?

The Witness: Yes, I think so. We did it, of course, on the flight training plane ourselves.

Mr. Hayes: I am sorry, I did not hear what you said.

The Witness: We made the modification ourselves on the flight training plane.

Tr. 28291 Q. How about the Delta planes that had been delivered to Delta; did they have to be returned to Convair for the installation of the new type pump?

- A. I don't believe so, Mr. Hayes. Delta did not seem nearly as interested in having the hydraulic system improved as we did.
- Q. You made several references to doing things and communicating with Convair, despite Mr. Hughes' instructions.

Just what were Mr. Hughes' instructions?

- A. He asked that I not go to Convair or negotiate improvements in the airplane at that time.
  - Q. At what time?
- A. Well, this was during the time I referred to earlier, that is, the time following the Delta accident.
  - Q. And you disobeyed the instructions; is that it?
- A. Well, I—I did not go to Convair in adherence to the instructions. I did permit some of my people to go.
  - Q. Did you permit them or instruct them to go!
- A. Well, I don't remember it quite that specifically. They were eager to go and we were anxious to move the airplanes along. I think it could be viewed to some degree as a breach of instructions, depending on the viewpoint.
- Q. You did not consider the instruction to go to ITr. 28301 the point of prohibiting you from sending your people to Convair to negotiate whatever improvements you wanted?
- A. Well, I think the impression I have now is that they thoroughly—a literal interpretation could probably be so construed. I don't remember the precise words. The idea was that we were not to work at Convair in this area, and to the extent that I had one or two men go down to undertake improvements in the hydraulic system, which was not really directly related to the—or we didn't know that it was directly related to the accident, because this, as I said earlier, was the result of our own flight test experience

and also some Delta experience, which I don't think I mentioned earlier, with hydraulic systems.

I guess at this point, looking back on it, I would say that sending those two people down at that time probably was not in agreement with what Mr. Hughes had asked me to do.

- Q. What reason did Mr. Hughes give you?
- A. Well, the immediate reason—by that I mean—
- Q. Whether immediate or not, I want to know what reason he gave you.

Mr. Sonnett: Just give him a chance to answer and you might be enlightened.

[Tr. 2831] Mr. Hayes: Or might not. Go ahead.

A. Well, the immediate reason for my staying and Mr. Rourke's staying in Los Angeles was to meet with Lockheed.

The impression I had from what Hughes said with respect to the Delta accident was that we should wait until we were sure as to what all would be required to improve the aircraft, if anything, as a result of the accident, but I am not entirely clear on exactly what was said now in that respect.

- Q. Is it your recollection or not that what Mr. Hughes told you was that he did not want you to negotiate any changes with Convair until it could be surely determined everything that would be required in order to improve the airplane?
- A. I think that's the impression I now have, Mr. Hayes.
  - Q. You do not recall precisely what he said?
- A. I recall very precisely, I think, the instructions, and I am trying to be as precise as I know how with respect to my reasons he gave. He didn't always give detailed reasons for what he wanted done.

Q. From your experience with Mr. Hughes in connection with the acquisition of airplanes for use by TWA, [Tr. 2832] can you say that it was his practice not to accept airplanes until he was sure that they were safe and were built in accordance with specifications?

A. Well, that certainly was my practice.

Q. I asked you about Mr. Hughes. You told us how intimately you worked with Mr. Hughes. Was that his practice?

A. Well, it wasn't his general practice to accept airplanes.

I think—my impression from having known Mr. Hughes closely is that if he were accepting airplanes, he certainly would not accept airplanes, unless he viewed them as being safe.

Q. And built in accordance with specifications?

A. Well, again, knowing him, I am not citing any specific incident, I would say if in his view he felt there was safety involved, not specifically written in the specifications, he wouldn't hesitate that it would be done, and I wouldn't either.

Q. What did you mean when you said it was not Hughes' practice to accept airplanes?

A. Well, we accepted airplanes that were finally used by TWA, even though they were on order by the Hughes Tool Company. And additionally, we frequently accepted [Tr. 2833] airplanes that were under contract, sometimes TWA contract, sometimes Hughes Tool, which were accepted and then operated by Hughes.

What I was trying to indicate was in those cases where he may have—at one time he ordered a DC-6 for himself, quite apart from TWA, and I had nothing to do with the acceptance of it, and I don't know what he did.

# Rummel-Redirect

Q. I am talking about planes for TWA. That is what this lawsuit is about, as you know, Mr. Rummel.

What do you mean by the statement that it was not Hughes' practice to accept airplanes?

A. I mean I don't recall Hughes personally accepting planes. He authorized others to accept planes—

Q. You mean he did not personally come down?

A. Yes.

- Q. That is all you meant by the statement, that he was not personally on the field to accept the airplane?
  - A. He didn't personally conduct-

Q. The acceptance procedure?

A. (continuing) —the acceptance flights, nor the acceptance procedure.

Q. And that is all you meant by that statement?

A. That is what I was referring to. I thought you were talking about what Mr. Hughes did.

[Tr. 2838] Q. I direct your attention, Mr. Rummel, to page 1 of Defendants' Exhibit 131 for identification, to the entry with the date 7 December 1959, and I ask you if that in any way refreshes your recollection as to when the Hughes Tool Company placed ropes around three of the aircraft?

This as you can see is a TWA Kansas City document. Do you not?

A. I don't know what it is, Mr. Hayes. I don't recognize it.

Q. Do you notice the initials "TWA Kansas City" on top?
A. I see that. I don't know what it means. There is some sort of a number under it, "678."

Mr. Sonnett: What that means is we produced it from the Kansas City files of TWA.

The Witness: I see.

Q. Does that refresh your recollection as to approximately when the Hughes Tool Company placed ropes around three of the aircraft?

A. Not really. As I sit here, I have no reason to doubt this information.

Q. Doubt what information?

A. That it says December 7th.

[Tr. 2839] Q. Were those aircraft at the head of the production line?

A. Well, I don't remember now, Mr. Hayes, the sequence. I seem to have the vague impression that No. 5 was No. 1 but I'm not really positive.

Mr. Hayes: I ask that there be marked for identification as Defendants' Exhibit 132 a memorandum from Mr. Bew to Mr. Cannady signed by Mr. Bew dated August 7, 1959, Convair 880 Status Report as of that date.

(Memorandum from Mr. Bew to Mr. Cannady dated August 7, 1959, Convair 880 Status Report, marked Defendants' Exhibit 132 for identification, as of this date,)

Q. I ask you if you recognize it,—a copy by the way to Mr. Rummel—as a TWA interoffice memo.

A. I recognize Bew's signature.

Q. If you look on the second page, you will see a schedule in Defendants' Exhibit 132 for identification giving the Convair manufacturing number in the first column and the delivery sequence in the last column.

You will note, if you will, please, that aircraft No. 5 referred to in Defendants' Exhibit 131 for [Tr. 2840] identification is listed as first in delivery sequence, Aircraft No. 6 mentioned in Defendants' Exhibit 131 for identification is

listed as the second in the delivery sequence and Airplane No. 8 listed in Defendants' Exhibit 131 for identification is listed as third, fourth or third, both numbers, as delivery sequence.

Do you notice those items, Mr. Rummel?

A. I see them here, yes.

Q. Can you now testify, is your recollection refreshed by Defendants' Exhibit 132 for identification, that Aircraft Nos. 5, 6 and 8 were at the head of the production line?

A. I can certainly testify that this is what Mr. Bew reported as of August 10, 1959.

Just where the Delta planes were and how they were interspersed looking at the total production line, I'm not certain.

- Q. Aren't the planes identified by customer on the second page of Defendants' Exhibit 132 for identification?
  - A. Oh, yes, I see that now. Yes, that's right.

Q. Did I directly state the delivery sequence?

- A. I would have every confidence that Bew knew what he was talking about when he wrote this letter on [Tr. 2841] August 8th.
- Q. So can you now testify with a refreshed recollection that Aircraft Nos. 5, 6 and 8 were at the head of the production line?
  - A. This would certainly so indicate as of August 10th.
- Q. Do you know of any planes at the head of the production line that were set aside other than those set aside by Hughes Tool Company?

I mean of course by February 1960.

A. Well, as I look at this, no.

Q. After Delta received delivery of its planes, were Delta planes returned to Convair for additional work or changes?

A. I don't remember, Mr. Hayes.

Q. You have no recollection?

A. No.

Q. Were there any changes made in the planes that went to TWA as a result of any lessons learned from Delta's operation of its 880s?

A. I'm sure there were, but I don't remember what they were.

Q. Weren't you intimately associated with such changes, Mr. Rummel?

[Tr. 2842] A. At the time, Mr. Hayes, I was quite conversant with them.

Q. Those were changes that TWA considered desirable!

A. Well, they were maintenance or reliability changes essentially.

Q. They were maintenance or what?

A. Maintenance or reliability.

Q. I am sorry. I still don't get the word.

A. Reliability.

Q. Reliability?

A. Yes, changes, mostly detailed in nature.

Q. Do you have any recollection of the deliveries to TWA being delayed in 1961 because manpower was diverted to make changes in the Delta airplanes that had been returned to Convair?

A. No.

Q. You have no recollection of that at all?

You gave some testimony Monday afternoon as to the number of planes that were at least relatively completed and were tendered to the Tool Company or TWA by Convair in 1960. I think you wound up estimating seven or eight allowing one or two either way.

Whatever the number, do you recall when those [Tr. 2843] tenders took place? I will ask you if the months of August, September and October would accord with your

recollection as to when the tenders took place.

A. Well, as I said the other day, Mr. Hayes, I don't remember exactly when these things occurred.

Q. Is it your recollection that it was the latter part of 1960?

A. I wouldn't be surprised if a few of them didn't occur then, but I suspect that some occurred well before then.

Q. You are not sure? You do not have a sure or definite recollection as to that?

A. I have been trying to sit here and recall it since you raised it again but I don't have any clearer recollection now than I had when I testified to it before.

Q. Were the planes that were so tendered, do you know, in final configuration? If you know. If you do not know, just say so.

A. Well, my impression is that they were offered for ground inspection and acceptance flight by Convair in belief on their part that they were configured for delivery.

Q. Including all passengers configuration requirements? [Tr. 2844] A. Well, setting aside the one training airplane that we had received, I am not entirely sure as I sit here now that the seats were in some of the planes. We may have agreed to an exception. I am not entirely sure all of the galleys were in but I am not positive of that.

Q. Were you personally present when any of these planes was tendered?

A. You mean present at Convair, San Diego?

Q. That is right.

A. I don't believe so.

Q. So you have no personal knowledge as to what state they were in at the time of the tender, is that correct?

A. Well, Mr. Bew kept me advised by phone, and also Mr. Rourke in this regard. And as far as did my eyes look upon the planes at that particular point in time, I don't believe so.

Q. No, you don't know.

A. Well-

Q. Do you know if they were painted in TWA colors?

A. No, because one of the questions that persisted was what color should they be painted in for the Hughes airplanes.

[Tr. 2845] Q. What is an open flight squawk?

A. Usually when it is not written off.

Q. What is a flight squawk then?

A. It is a complaint by flight crews usually that are discovered during a flight, including ground roll and so on, the entire flight, which they wish to have corrected.

Q. Is the expression open flight squawk ever used in connection with acceptance of deliveries by the customer from an aircraft manufacturer?

A. Well, it is a fairly common term, Mr. Hayes.

Q. In that context, what does it mean?

A. Well, that would mean that a member of a flight crew either, Hughes or Convair's, I'm not sure—I mean a flight squawk per se could come from any flight crew—and the fact that it would be shown as open would indicate it had not been signed off, either by inspection or by possibly another flight if the flight were indeed required.

It would mean it was open. It had not been taken care of. Or if it had been taken care of it had not been checked

and acknowledged as having been taken care of.

[Tr. 2846] Q. In the course of acceptance of planes by customers from aircraft manufacturers, is there often a review or is there from time to time a review by the customer of claims that the plane is not complete, is not according to specifications and that such claims are referred to as open flight squawks?

- A. Well, open flight squawks, depending on what they are, can reflect that kind of thing.
- Q. Do you recall having a meeting—first of all I do not know whether he has been identified for the record. It is easier to ask you.

Who was Mr. Loomis of Convair in 1960?

- A. For a period during 1960, Mr. Loomis ran the San Diego Division of Convair.
  - Q. Did he succeed Mr. Naish then?
  - A. Oh, no, Mr. Naish was president of Convair.

The San Diego Division was one of a number of divisions that reported to Mr. Naish.

- Q. Mr. Loomis was the head of the San Diego Division, is that right?
  - A. That's the way I recall it, yes.
- Q. That was the division which was building the 880s, was it not?
  - A. Yes.

[Tr. 2847] Q. Had he ever been with TWA?

- A. Excuse me?
- Q. Had he ever been with TWA?
- A. Yes.
- Q. When?
- A. Well, from before 1943 some time to—I can't be sure. Approximately 1948 I would guess.
  - Q. Was it then that he went with Convair?
- A. Well, I'm pretty sure, Mr. Hayes. I can't be entirely positive, but I'm quite sure he went directly to Convair from TWA.
  - Q. Do you know where he is now?
  - A. Not definitely, no. I think he's in Los Angeles.
- Q. You do not know what company affiliation he has or is he still with Convair?
- A. Oh, no. He's not with Convair. I answered that way because I think I knew where he was a year or two ago. I'm not sure if he is still there or not.

Q. Did you have a meeting with Mr. Loomis in approximately August or September 1960, in which you discussed with him the state of completion of some of the tendered planes?

A. I believe there was such a meeting, perhaps at [Tr. 2848] that time.

Q. Do you recall what position you took at that time in your conversation with Mr. Loomis with respect to the state of completion of the tendered planes?

A. Well, broadly I remember trying to get Loomis to complete the planes and to complete them in accordance with our desires.

Q. You mean the tendered planes, those that had been tendered?

A. That I don't remember with that degree of definitiveness.

Q. You do not recall-

A. Well, I-

Q. Go ahead.

A. I'm sorry.

Q. Go ahead. Say what you were going to say.

You do not recall stating to Mr. Loomis in substance that the tendered planes had various and sundry open flight squawks that had not been taken care of?

A. Well, if that was the fact I probably told him but I don't remember.

Q. All you remember is meeting with him?

A. I remember there was a meeting that lasted several hours in his office that involved some table [Tr. 2849] pounding but I don't remember the details on it.

Q. You do not recall what he said to you with respect to open flight squawks on tendered planes?

A. I remember he wasn't very anxious to do much about them.

Q. You mentioned several times, Mr. Rummel, about Convair offering to lease 880s to TWA in 1960.

What is your source of knowledge there?

A. Telephone conversations with Mr. Dudley Digges as Inow recall it.

[Tr. 2850] Q. Did you obtain from Mr. Digges the terms of the leases that were being proposed?

A. Well, I don't remember specific terms.

As I recall it, he was indicating—advising me of Convair's efforts to work out lease arrangements as one way to deliver airplanes.

Q. Did he ever advise you that Convair had worked out lease arrangements?

A. I think he indicated he had proposed—Convair proposed lease arrangements to the Hughes Tool representatives, Mr. Hayes.

[Tr. 2904] \* \* \* Mr. Hayes: You may examine.

# Examination by Mr. Sonnett:

Q. Mr. Rummel, do you recall a conversation with Mr. Charles Thomas after he became president of TWA relating to the scope of his authority concerning aircraft acquisition?

A. Yes, sir.

Q. How soon after he became president did that conversation occur?

A. I can't be completely exact, but in the order of a month or so, I would say.

Q. Was this your first meeting with Mr. Thomas alone?

A. It was my first meeting with him at all and I was alone.

Mr. Hayes: If I may suggest, you need not ITr. 29051 lead your own witness. I don't want to object on the ground of leading and Mr. Sonnett well knows how to ask questions that are not leading.

# By Mr. Sonnett:

- Q. Was anybody else present at the meeting?
- A. No, sir.
- Q. Had you had a meeting with Mr. Thomas alone prior to that meeting?
  - A. No, sir.
- Q. What did Mr. Thomas say and what did you say on the subject of authority with respect to aircraft acquisition!

Mr. Hayes: I object. First of all, it is, again, leading. But aside from that, I go back to the comment you made yesterday, Mr. Brownell, which I did not discuss at that time—I thought it was inappropriate at that time—you said that you were inclined to change your ruling, and giving as a reason that I had asked Mr. Rummel questions about communications between Mr. Thomas and himself.

It is true that I had asked such questions about the conversations between Mr. Thomas and Mr. Rummel, with respect to the operation of the airline.

Mr. Thomas was the president of the airline, ITr. 29061 charged, as president, with the performance of all the duties that a president had, was held out to the world as president of the airline, and my questions sought to elicit only those matters that had to do with the operation of the airline, reports Mr.

Rummel made to Mr. Thomas, Mr. Thomas' comments on them.

The particular thing, I think, which was most brought out was Mr. Thomas' views as president of the airlines with respect to how many aircraft TWA would want. That was bringing out from me, from one officer what the opinions of other officers were concerning the number of aircraft that plaintiff should have at any particular time.

This present question goes far beyond the administration of the affairs of the corporation—far beyond it. Mr. Thomas is alive. There is no reason why his testimony could not be taken, if it is necessary to plaintiff's case at all.

What is sought to be brought out here is sheer hearsay by Mr. Rummel of what Mr. Thomas said, not concerning the operation of the airline at all, but concerning a supposed separate and private agreement between Mr. Thomas and a person not an officer, a person who happened to be the president ITr. 2907 of the corporation which owned the majority of the stock of the plaintiff leading up to a supposed private and separate agreement, which was supposed to limit his authority in some fashion.

It is an attempt to destroy by hearsay the authority which Mr. Thomas legally has.

If there was such a conversation, I submit Mr. Thomas is the one to put in any conversation he had with Mr. Hughes, not Mr. Rummel, who was not a party to it.

I ask you, therefore, to continue to sustain the objection that you have already sustained.

Mr. Sonnett: I think this is proper redirect, Mr. Brownell.

The witness has been asked on cross to narrate a series of conversations with Mr. Thomas relating to TWA and to equipment procured for it, and the like.

This is a conversation between the witness and Mr. Thomas, the first one after he became president, with respect to the scope of his authority to administer TWA.

I submit it is entirely proper redirect.

The Special Master: Reserving, of course, ITr. 29081 any opinion as to the weight of evidence, I will allow the answer.

## By Mr. Sonnett:

Q. The question was what did Mr. Thomas say and what did you say on the subject of aircraft procurement.

A. Well, Mr. Thomas said that he understood that Howard and I would continue to handle the equipment matters for the airline, that he would be operating head of the airline.

I indicated to Mr. Thomas that Mr. Hughes had already said the same thing to me, and that I certainly would do my utmost to keep him advised of developments with which I thought he, as president, had to be kept advised.

Q. I show you Defendants' Exhibit 62, Mr. Rummel, and I invite your attention to the page marked II-2 under the heading—

Mr. Hayes: Which page is that?
Mr. Sonnett: II-2.

Q. (continuing)—"Equipment." Will you examine that page, Mr. Rummel, please?

A. Yes, sir. I have.

Q. Does that page correctly set forth your views at the time with respect to the subject matter covered?

ITr. 29091 A. Yes, sir.

- Q. And that was at or about March 1, 1961, as I recall it.
  - A. The report was issued March 1, 1961, yes, sir.
- Q. Have you at any time since that date had any reason to or have you, in fact, changed your views, as expressed in Defendants' Exhibit 62?
- A. No, I think as time passed they became all the stronger.
  - Q. In what respect?
- A. Well, for example, after this report was written, availability of the 990s became poorer and the price of the 990s became higher than reported in this report.

Mr. Sonnett: Will you mark, please, as the next TWA exhibit a document entitled "Purchase Agreement between General Dynamics Corporation (Convair Division) and Hughes Tool Company Relating to Manufacture of Convair 600 Aircraft," dated November 10, 1960, indicating on its face that it was produced from the files of the Hughes Tool Company at Houston.

(Document entitled "Purchase Agreement between General Dynamics Corporation (Convair Division) and Hughes Tool Company Relating to Manufacture of Convair 600 Aircraft," dated November 10, 1960, marked TWA Exhibit 12 for identification as of this date.)

[Tr. 2910] Mr. Sonnett: I offer it in evidence.

Mr. Hayes: No objection.

The Special Master: Received.

(TWA Exhibit 12 for identification received in evidence as of this date.)

# By Mr. Sonnett:

Q. I show you TWA Exhibit 12, Mr. Rummel, and ask you whether in or about November of 1960, it came to your attention that an agreement had been made between General Dynamics and the Tool Company relating to the acquisition of the planes then designated Convair 600.

A. Well, I don't recall ever having seen this, although I believe Raymond Holliday indicated that discussions were underway for the possible acquisition of some 600s.

- Q. Did you have any connection in the negotiation between General Dynamics and the Tool Company in respect of this agreement?
  - A. No, sir, none.
  - Q. Why not?

Mr. Hayes: I object to that.

- Q. Did you have any conversation with Mr. Howard Hughes at any time as to whether or not you were to participate in any respect in negotiations relating to the ITr. 2911 so-called Convair 600?
  - A. Yes.
  - Q. What did Mr. Hughes say?

Mr. Hayes: Can you fix a time and place?

Q. Will you fix the time and place, as best you can't

A. There were a number of telephone conversations. I believe—I can't fix it exactly, no, sir—but some time during 1960, I think around mid-year and possibly before, I was specifically instructed not to have anything at all to do with the Convair 990s or any activities relating to the 990s, and that I should advise all my people similarly not to become involved in 900s.

- Q. Did you so advise your people?
- A. Yes, sir, I did.
- Q. Who were your people, as you meant to convey in that answer?
  - A. Mr. Bew, Mr. Rourke.
  - Q. Will you briefly describe Mr. Bew's duties in 1960?

Mr. Hayes: That is strictly repetition. It has all been covered.

Mr. Sonnett: I asked him to do it briefly.

Mr. Hayes; Even the briefly. There was [Tr. 2912] objection after objection on cross that the matter had been covered. This has been covered in detail.

The Special Master: Have you anything to add to what you previously testified to about Mr. Bew's duties in this period?

The Witness: So much has been said, I don't remember exactly what I said earlier, Mr. Brownell.

The Special Master: Off the record.

(Discussion off the record.)

The Special Master: I will allow the question.

A. Mr. Bew was the Hughes plant representative whose job it was to administer, as plant representative, those facets of the contracts which were under his surveillance at the facility.

This included conformance reviews, specification activities, mockup reviews. It included keeping track and reporting on production progress, delivery expectancy, arranging for acceptances, that is, flight crews conducting the tests when appropriate, and finally his assigned duty was to delivery of the aircraft for—that is, pursuant to contracts.

Q. With respect to TWA Exhibit 12, Article I, Sub-IIr. 29131 paragraph (a), Mr. Rummel, you note there a

reference to six Convair 600 aircraft to be manufactured by Convair in accordance with the terms of this agreement, do you not?

A. Yes, sir.

Q. Was the designation of that aircraft subsequently changed to Convair 990?

A. I don't know if it was in the contractual sense, but the 990s were 600s.

(Tr. 2914) Mr. Hayes: I will stipulate that these were 990s if that is what you are trying to prove. Mr. Sonnett: Thank you.

## Q. I invite-

Mr. Hayes: You would hurry up this thing a great deal if you only tell me what you want to prove. I will stipulate most of it.

Mr. Sonnett: I doubt it.

Mr. Hayes: I am sure you do.

Q. I invite your attention, Mr. Rummel, to Article 2, Subparagraph (a) of the same exhibit entitled "Delivery Schedule."

That indicates, does it not, that six 990s were to be delivered according to this contract between July and October 1961?

Mr. Hayes: So stipulated.

#### A. Yes.

Mr. Hayes: It speaks for itself.

Q. Did you have any information from any representative of the Tool Company as to why six 990s were ordered in November, 1960 by the Tool Company?

A. Yes.

Q. What was the information and from whom did you receive it?

[Tr. 2915] Mr. Hayes: Fix a time and place, please.

A. Well, the information was obtained in New York, I believe, from the combination of Ray Holliday and Ray Cook. I had similar information from Convair as to the circumstances which caused the order to be placed at that time.

And my understanding-

Mr. Hayes: Before Mr. Rummel proceeds, I would ask that he be directed to confine his answer to whatever Mr. Holliday and Mr. Cook said to him. What representatives of Convair may have said to him is pure hearsay.

Q. Will you do that, Mr. Rummel, state as best you can the substance of what Mr. Holliday or Mr. Cook said to you on this subject?

The Special Master: And when it took place.

A. Well, during—it was in the fall of 1960, and the substance was that that six 880s were to be released by Hughes and made ready for Northeast Airlines, but that Convair would not agree to merely releasing those planes on the basis that if they did so their total orders or expectancy of orders, the level of business they would anticipate would be less by six airplanes.

They viewed that if Hughes merely released six ITr. 29161 planes to Northeast, that those planes would take the place of six. Convair could reasonably build and sell

to Northeast.

So, I was advised Convair's position was that they would agree to the substitution, if you like, of six, but what they were really saying as I understood it, they would agree to make the six available to Northeast providing the total number of planes then on order by Hughes would remain on order; that they would certainly agree to the 990s, and I think I had the impression they were referred to as 990s.

Mr. Sonnett: Will you mark please, for identification, as TWA 13 the document I hand you of five pages headed "Raymond Holliday."

(Document consisting of five pages headed "Raymond Holliday" marked TWA Exhibit 13 for identification, as of this date.)

- Q. Mr. Rummel, was there an office of the Hughes Tool Company maintained on Romaine Street or Boulevard!
- A. There was a Hughes Tool Company office at 7000 Romaine Street in Hollywood, California.
  - Q. Were you ever in that office?
  - A. Yes, sir.
- Q. Can you describe briefly the activities carried [Tr. 2917] on in that office and who was in charge of it?
- A. Well, I can describe that part with which I was familiar.
  - Q. Yes, please do.
- A. Noah Dietrich had an office in that facility and I believe I testified earlier as to his position at that time. He was executive vice-president, I believe, or some such title. He handled the financial affairs for Hughes.

For a period of time, a Mr. Koontz and Vic Leslie were in that office, and additionally this seemed to be the communications center for Hughes' activities.

This seemed to be headed by Bill Gay and numbers of others. The others would record or take down messages and relay messages. They would arrange for phone calls for Hughes. And, however, Gay was more than this. Gay appeared to be sort of an assistant, personal assistant, if you like, to Hughes in many areas.

[Tr. 2948] • • • Q. Mr. Rummel, is it the fact that at some point during the year 1960, Convair slowed down its production line for 880 aircraft.

- A. Yes.
- Q. Why was that?

A. Well, my understanding at the time was that they were unable to continue to carry the burden of building airplanes and not receiving—or not effecting [Tr. 2949] delivery and receiving payment for them.

- Q. Referring to the procedures for acceptance of planes about which you testified on cross examination, particularly relating to the 880s, did you at any time give any instructions to Mr. Bew concerning the practice he was to follow relating to acceptance procedures?
  - A. Yes, I did.
  - Q. What were those instructions?
- A. The instructions were that he was not to proceed with acceptance procedures or to conduct the acceptance flights without first receiving personal clearance from me or from Mr. Hughes.
- Q. Did he conduct any acceptance procedures on Convair 880's during the year 1960?
  - A. No final acceptance procedures.
- Q. I think you have testified that TWA got one 880 during the year 1960 as a training plane; is that correct?
  - A. I'm sorry, yes, that's correct. We did take-

Q. Other than the training plane?

A. Other than the training plane. That slipped my mind.

- Q. Why did you give Mr. Bew those instructions?

  [Tr. 2950] Mr. Hayes: 1 object to why.
- Q. Did you have a conversation with Mr. Howard Hughes on that subject?

A. Yes, sir.

Q. What did he say and what did you say and place the time as nearly as you can?

A. Well, there were several conversations with Hughes. I believe the first was along this line—it was fairly early in 1960 to mid-year—I can't say the exact time.

No, there was earlier—there was an earlier case. That was during the fall of 1959, I believe the first—around that time of the first discussion along this line.

And the instructions from Hughes were that we were not to accept 880s without specific clearance from him, and that I should so instruct Mr. Bew or an others involved in that operation.

Q. Aside from the training plane, did you receive any clearance from Mr. Hughes relating to 880s during 1960?

A. No.

Mr. Sonnett: You may inquire.

ITr. 29861 \* \* \* Q. You testified this morning that beginning some time in the fall of 1959, Mr. Hughes told you not to accept any deliveries from Convair without clearance from him, and that similar statements or instructions were received by you from him into 1960; do you recall that?

- A. Yes.
- Q. Did Mr. Hughes give you any reason at that time?
- A. I don't recall any specific reasons.
- Q. Did he mention the difficulties in connection with financing?
  - A. No, I don't recall that.

In fact, at one time he told me to not get involved in financing.

- Q. No, I am not asking you if he asked you to get involved in financing. I am asking if he mentioned [Tr. 2987] difficulties of financing as a reason for not taking deliveries.
  - A. I don't recall that, Mr. Hayes.
- Q. You have no recollection on the subject? At any time when he instructed you not to accept deliveries?
  - A. I don't recall that.
- Q. Is it your testimony that he gave you no reason whatsoever?
- A. Well, I don't recall he explained his position. He just asked that we not accept the planes as I have explained it.
- Q. When did ou first become a member of the finance committee of TWA, Mr. Rummel?
- A. To try to clarify my answer, I probably ought to say that there were several committees from time to time that carried that name.

The finance committee I was a member of was established, I believe—I am not sure, Mr. Hayes—I think some time

during 1961. At least it was after Mr. Tillinghast became president.

And the members were TWA management people.

Q. Can you identify them?

A. Well, it varied somewhat from time to time.

I believe it was Mr. Leslie, I think Mr. Cocke, ITr. 2983 myself, Floyd Hall, I believe.

Q. Or was it Mr. Tillinghast?

A. Floyd Hall, I believe.

I don't remember if Mr. Tillinghast has—I don't think he was a member.

Q. What was the function of the committee?

A. The function of the committee was to review appropriation requests and to recommend to the president either approval or disapproval to those items that were presented to the committee under the rules.

Q. Appropriations for what?

A. Capital.

Q. Capital appropriations?

A. Yes.

Q. How did you become a member of the finance committee?

A. How did I become a member?

Q. How did it happen? Yes.

A. Well, my function on the committee was primarily to express views—in addition to whatever business judgment I might want to express, it was to express views on the compatibility or non-compatability of the request with our long-range plans.

ITr. 29921 • • • Q. You testified on redirect that when Mr. Burgess became president, Mr. Hughes told you or at least Mr. Burgess told you, I guess your testimony was—no, Mr. Hughes told you—I am sorry—in substance that Mr. Hughes and you would continue to handle equipment matters, and that Mr. Burgess would operate the airline.

Can you remember the words that were used by Mr.

Hughes ?

A. Well, I can't remember the precise words, [Tr. 2993] Mr. Hayes, no.

Q. What was meant to you by Messrs. Hughes and Rummel continuing to handle equipment matters?

What did that mean to you?

A. It meant that we would continue to operate between us as we had heretofore with respect to negotiations with manufacturers, exploration of equipment possibilities and the like.

Q. How many negotiations were there with manufacturers after Mr. Burgess became president?

A. Well, during the time he was president, we had—we conducted negotiations of sorts with DeHavilland, with Bristol, with Vickers.

Q. You said negotiations of sorts.

What do you mean?

A. Well, negotiations of both an exploratory nature and those which were heading toward definitization of contracts. I meant negotiations generally.

Q. Which, if any, of those negotiations headed toward

anything like a definitive contract?

A. Vickers, Bristol and while DeHavilland, as I recall it, had submitted contract forms we didn't, to my best recollection now, attempt to negotiate those forms.

[Tr. 2994] Q. Did the Vickers deal get to the point where any informal commitment was made by anybody!

- A. Yes, it went beyond that.
- Q. All right, tell us about it.
- A. Hughes verbally agreed to buy fifteen Viscounts.
- Q. For TWA1
- A. Yes.
- Q. What happened?
- A. They weren't procured, that is, final papers were not signed.
  - Q. Who decided not to procure them?
  - A. I believe TWA did.
  - Q. Who in TWA? Was it Mr. Burgess or Mr. Leslie!
- A. Well, there had been a downturn in business, and I believe Hughes had made it clear that this particular burden would have to be carried by TWA.

And I believe Leslie took the position that with the downturn in business TWA was unable to move ahead with the deal.

- Q. Did Mr. Burgess concur in that opinion?
- A. I don't remember Mr. Burgess resisting the opinion.
- Q. This was despite whatever kind of informal commitment Mr. Hughes had made to Sir George Edwards, [Tr. 29957] was it not?
  - A. This was after that you say?
- Q. No. The decision not to acquire was despite whatever informal commitment had been made by Mr. Hughes to Sir George Edwards of Vickers?
  - A. That is my recollection, yes.
  - Q. Who reported the TWA decision to Mr. Hughes!
  - A. I did.
- Q. You testified on your redirect to Mr. Tenney that you reported Mr. Hughes' equipment decisions to TWA.

This was one instance where you reported TWA's equipment decision to Mr. Hughes, was it not?

A. Well, this was certainly all covered at length in my deposition.

What I advised Mr. Hughes on was that despite the fact before making a commitment as I understood it we obtained a view from TWA that TWA was in the process of reappraisal and it might change its mind.

In the meantime, I continued to negotiate with Vickers to reduce the price and other factors to make the deal still possible hopefully, but in the end had to advise Mr. Hughes that TWA did not feel it was able to proceed.

Q. Mr. Hughes was upset by that advice when he ITr. 29961 received it from you, was he not?

A. Yes. Well, I certainly—this was by telephone. I think the wires were pretty clear in that respect.

- Q. He mentioned to you that he would not change his commitment to Sir George Edwards because it was worth more to him and his reputation in Europe to stick with his word than to back out?
  - A. That's the way I remember it.
- Q. About a year later he told you that he had talked to Sir George Edwards who was satisfied that he had discharged all his responsibilities; is that right?
  - A. Yes, sir.

Well, I say I think it is a year. I'm not sure of that.

- Q. Do you know in what fashion Mr. Hughes satisfied his commitment to Sir George Edwards?
- A. Well, I can only give you my impression of what he did.
  - Q. Fire away.
- A. Well, my impression is that he made efforts to place the fifteen airplanes, and at one point he had Leonard

Schwartz make similar efforts. And I believe [Tr. 2997] at one point in time he had some others not connected with either TWA or Hughes Tool making similar efforts.

The success that he had in this respect I'm not sure of,

Mr. Hayes.

Q. Did you ever learn that the particular Viscounts were sold by the Vickers Company to Northeast?

A. Well, I knew eventually that—I believe the majority

wound up there. I don't know how many.

Q. That was the way that Mr. Hughes discharged his commitment to Sir George Edwards?

A. Well, I don't recall the timing that clearly, Mr.

Hayes.

The information merely was that Sir George indicated satisfaction and that Hughes had fulfilled any and all obligations that he may have had morally or otherwise on this point.

Mr. Hayes: May we take a brief recess?
The Special Master: All right.
(Short recess taken.)
Tr. 29981 Mr. Hayes: May we resume?
The Special Master: Proceed.

# By Mr. Hayes:

Q. In this conversation you had with Mr. Hughes concerning Mr. Burgess' authority—and I frankly have forgotten whether you gave a similar conversation with Mr. Burgess—were you suggesting that Mr. Burgess was not to concern himself at all with the subject of what planes TWA should have?

A. I was only reporting the conversation.

Q. Did it mean to you that Mr. Burgess had been instructed by Mr. Hughes to keep his mouth shut on all such matters as to the possibility of acquiring equipment?

A. It wan't discussed that way, Mr. Hayes. Just as I described it.

0. Or did it mean to you that so far as any prospective acquisitions were concerned, evaluations and writing of specifications would continue to be conducted by Mr. Hughes and you so that the president would be relieved of that burden?

A. No, what it meant to me was that Hughes would contime to handle equipment as he always-had been doing for the company.

[Tr. 2999] Q. The way he had been doing it was negotiating himself with you as a technical assistant making evaluations, writing specifications, et cetera? Isn't that the way he had been doing it?

A. Well, I was a little bit more than just a technical assistant

Q. What more were you than that?

A. Well, as I have already indicated, I was involved in negotiating numbers of the aspects of contracts and other facets beyond the specifications, Mr. Hayes. That's what I am talking about.

Q. But that is all you had been talking about, participating in negotiations looking toward possible acquisitions and assisting in the writing of contracts when decisions had been made to acquire?

Mr. Sonnett: I think that is argumentative in light of the prior testimony.

Mr. Hayes: This is very important in the light of redirect.

The Special Master: Sustained.

Q. Do you know to what extent, if at all, Mr. Burgess, in fact, consulted with Mr. Hughes with respect to the equipment TWA should or should not have? Do you know! [Tr. 3000] A. No. I don't.

Q. When you state that it 'was Mr. Burgess' job to be the operating head of the airline, just what did you mean!

A. Well, my impression of what Hughes meant was that Burgess would run the airline and Hughes would run the equipment end of the business.

Q. Did running the airline in your mind entail a responsibility for having the necessary equipment to run it properly?

A. Well, I think it was pretty clear that he could only operate the equipment that was available to him to operate.

Q. Did you understand by running the airline, he was to simply sit back and take whatever equipment was there and remain silent as to any suggestion he might have with respect to changes of equipment? Is that what you understood by operating the airline?

A. I have explained to the best of my ability what I understood, Mr. Haves.

Q. You can add nothing further?

A. No, sir, I don't know what to add.

Q. You testified this morning, and also on June 23rd I think it was, on June 23rd to a similar conversation with ITr. 30011 Mr. Hughes concerning Mr. Thomas, and this morning to a conversation with Mr. Thomas along the same line.

So as to save time, if I asked you the same question concerning the meaning of the conversation you had with Mr. Hughes respecting Mr. Thomas or with Mr. Thomas, as I did with respect to the meaning of the conversation you

had with Mr. Hughes concerning Mr. Burgess, would your answers be the same?

The Witness: Could that be read?

The Special Master: Yes. (The question was read.)

The Witness: Would you please read the last part again?

Mr. Hayes: It is a little involved.

The Special Master: Let's start over again. Do

you want to rephrase it?

Mr. Hayes: Maybe I will do it this way:

## By Mr. Hayes:

Q. You recall that I just asked you a series of questions with respect to your testimony as to the meaning of your conversation with Mr. Hughes concerning the division of authority between Mr. Burgess, as the operating head of the airline, and Hughes with the able assistance of Mr. Rummel handling equipment.

[Tr. 3002] Do you recall that series of questions I asked you relating to Mr. Burgess?

A I don't remember saying about how able I was.

Q. No, that was gratuitous on my part.

A. Yes, I remember.

Mr. Sonnett: Very well deserved. Thank you.

Q. If I asked you exactly the same questions concerning your understanding of your conversations with Mr. Thomas and with Mr. Hughes respecting the relative jurisdictions of running the airline as against acquisition of equipment, would your answers be the same as they were concerning Mr. Burgess?

A. Well, with respect to the gist of what Hughes was

I was struck by the similarity of the Thomas comment to my conversation with Hughes at the time.

- Q. What acquisitions did TWA contemplate during the period that Thomas was president?
  - A. You mean on his own?
- Q. Did TWA contemplate, while Thomas was president, a period of two years, from 1958 to 1960.

The Special Master: I think the witness is a little unclear as to whether you—

ITr. 30031 Mr. Hayes: I will try it again.

# By Mr. Hayes:

- Q. Did TWA engage in any negotiations looking toward the acquisition of any aircraft during the period Mr. Thomas was president?
  - The Special Master: This is without reference as to whether title would have gone to Hughes or TWA!

Mr. Hayes: Yes.

- A. I don't recall any independent TWA negotiations.
- Q. Do you recall any that you participated in with Toolco looking toward acquisition of aircraft for TWA?
  - A. No.
- Q. Do you know of any negotiations with Lockheed looking toward the acquisition of Electras while Mr. Thomas was president?
  - A. No.
  - Q. You participated in none?
- A. I recall Lockheed making efforts from time to time, but I don't recall undertaking negotiations with them.
- Q. Do you recall that anybody else in TWA conducted any negotiations with Lockheed looking toward the acquisition of Electras while Mr. Thomas was president?

- A. No. Our people in Kansas City were trying to keep [Tr. 3004] up to date, as best they could, on the Electra, but I certainly wouldn't call it negotiations for airplanes.
- Q. Do you recall Mr. Leslie negotiating with Lockheed in connection with the acquisitions of Electras?
  - A. I do not.
- Q. And relating it also to the financing of the acquisition by Lockheed?
  - A. No, sir.
  - Q. You never heard of that?
  - A. I don't recall that.
- Q. Do you recall Mr. Thomas' position concerning
  - A. No.
- Q. Did you ever hear that Mr. Thomas was opposed to the acquisition of Electras?
- A. Well, if he was, Mr. Hayes, I don't recall it.
- Q. What knowledge do you have—and I mean knowledge, not impressions, Mr. Rummel—as to the frequency of direct contract between Mr. Hughes and Mr. Thomas while Mr. Thomas was president?
- A. Well, Mr. Thomas indicated on a few occasions he either had been talking to or expected to talk to Hughes. I didn't—I don't remember ever seeing him talk to him.
  - Q. You don't remember him what?
  - ITr. 3005] A. I don't remember seeing him talk to him.
- Q. Of course Mr. Thomas was under no duty to report to you his conversations with Mr. Hughes, was he?
- A. Well, I would certainly have thought he would have mentioned it to me, had it involved equipment, but other than that, no.
  - Q. But he never mentioned the Electras to you?
- A. Well, Mr. Hayes, I certainly can't sit here and say that there the word "Electras" didn't pass between us.

- Q. No, no. I mean he never mentioned to you that he was opposed to the acquisition of Electras?
  - A. I don't recall that.
- Q. You testified on your redirect that in the 1954-60 period no one in TWA, other than you, was charged with the overall responsibility for technical evaluation of aircraft being considered and for making recommendations of the type and numbers TWA needed.

Do you recall that testimony?

- A. Yes.
- Q. And that it was incumbent on you to reflect the total company view with respect to acquisitions?
  - A. Yes, sir.
- Q. What do you mean by overall responsibility or IT. 30061 what did you mean in giving that answer?
- A. I don't know how to add to what I have said along the lines of what my responsibilities were.
- Q. I quoted what you said. Specifically, did you mean that all other departments of TWA were under an obligation to make their recommendations concerning equipment to you?

The Special Master: You mean acquisition equipment?

Mr. Hayes: Yes. Didn't I say "acquisition"? The Special Master: No.

Mr. Hayes: I am sorry.

- A. I would so view it, yes.
- Q. That the Sales Department was under an obligation under the TWA arrangement to advise you of any suggestion it had with respect to prospective acquisitions; is that right?
- A. Well, it was my duty before making recommendations to be certain that they were broadly based and in-

cluded the views of all those who should have views in this area. And similarly, my position was well enough known so that others who might have views on equipment would have made them known to me.

Q. Are you suggesting by the answer that you gave on [Tr. 3007] redirect that others in TWA were barred from making recommendations directly to the president or to the board of directors?

A. I don't think anybody had—wore muzzles, Mr. Hayes. It was my job to bring these various views together, if possible, and to come up with a position that I was willing to recommend.

ITr. 30081 Q. Whether they were muzzles or only mufflers, was any officer of TWA barred from making his recommendations to top management except through you?

- A. No, we didn't operate that way.
- Q. Some of these top officers were members of the board of directors, were they not?
- A. Yes, certainly.
- Q. By your answer about you being the only one who had the overall responsibility for recommendations, you were not suggesting, were you, that there was any obligation on top management to follow your recommendations?
- A. Well, if you mean did I think that the mere fact that I made a recommendation automatically—was automatically approved without question, certainly not.
- Q. Your task ended when you made your recommendations, did it not, until there was action taken by somebody else pursuant to your recommendation?
- A. Well, I'm not sure I understand what you are get-

My task certainly didn't end by presenting a letter of recommendation or a report of recommendation. I can assure you that I made every effort to have the recommen-

dations adopted and followed, whether it was to ITr. 3009 Hughes or whoever it was.

- Q. And if it was not followed your responsibility ended, did it not?
- A. Well, I on occasion attempted to convert people to my views, even though I knew inevitably they might not appear to adopt them. Like for example the switch from 30 to 20 Convairs.
- Q. After all your efforts if your recommendation was not adopted your responsibility had ended, had it not?
- A. I guess if the recommendations as such weren't followed, it was my obligation to come up with a new recommendation.
- Q. And as to the new recommendation, you might or might not go through the same process of having it not adopted, is that correct?
- A. Well, it is certainly always a possibility that something might not be adopted.
- Q. Not every single one of your recommendations was invariably adopted, is that true, Mr. Rummel?
  - A. No, I'm just like everybody else in that respect.
- Q. On redirect you answered in response to some questions of Mr. Tenney if you gave an answer which [Tr. 3010] amended an answer you had given to a question I put to you on cross.

The question I put to you on cross and it is quoted at page 1546 of the transcript was:

"Do you know of any plane in the development of which Mr. Hughes participated and which at the time of such participation was intended to be used by an airline other than TWA?

Your answer was quoted by Mr. Tenney as:

"No, I do not think of any instances that I can certainly state as a fact, if that is what he had in mind."

You proceeded to explain that in answering my question you had in mind only aircraft destined specifically for airlines other than TWA.

Do you recall that?

- A. Yes, sir.
- Q. Then Mr. Tenney beginning at page 1547 asked you:

"Q. Looking at Mr. Hayes' question on page 608 which perhaps can be construed as including and I so construed it as including aircraft intended to be used both by TWA and by other airlines, what would your answer be?

[Tr. 3011] "A. Well, the development of the Constellation in which Mr. Hughes participated was certainly intended to be used by airlines other than TWA all along. When we were working on the Convair series that led to the 880, each of those was intended to be sold and used by airlines in addition to TWA. The Avro that I mentioned, supersonic Avro was another such case.

"The Florida project that I mentioned involved to my best understanding planes not only for TWA but for other airlines as well, and I believe in addition to the government. I might add that I don't know of any manufacturer that could have undertaken a major plane development program for one airline or really any one airline that could afford to pay for such a thing."

You have already told us in some detail in the course of your cross or part of your depositions marked in evidence

concerning the Constellations, the Convairs, the 880, the Avro, Supersonic Avro, but you have not told us anything about the plane in the development of which Mr. Hughes participated that was involved in the Florida project.

That is the only project that you mentioned [Tr. 3012] which involved planes not only for TWA and other airlines but also for the government.

What was that airplane that was involved in the Florida project?

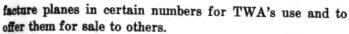
A. The airplane, Mr. Hayes, was never fully defined.

The Special Master: Have you finished your answer?

The Witness: Yes, I think so.

- Q. Did the Florida project have a code name?
- A. It might have had, Mr. Hayes. I don't recall it at the moment.
- Q. Does the word "Greenland" click with your recollection, Project Greenland?
- A. Yes, I believe it—I believe that was the name suggested by Ray Cook.
- Q. Describe the Florida project or Project Greenland, please. Give us all you know about it, Mr. Rummel.
- A. During conversations with Mr. Hughes, he indicated interest in manufacturing planes for TWA and others as part of a broad Florida project he then had under way, and the intention was to develop passenger and cargo planes which would be not only of interest to TWA but to other airlines and hopefully to the govern- [Tr. 3013] ment as well.

He instructed that an application be drawn for submission to the CAB to permit Hughes Tool or Hughes, I don't know now that it was Hughes Tool specifically, to manu-



However, he wanted the broadest possible erage in the application so as to permit it to apply to numbers of let's say, discrete designs, such as might be evolved under the broad authority.

I remember that one of the problems was to know exactly how to write a description to the CAB so that we would know—so that they would know what he had in mind and still have it broad enough to permit the latitude that Hughes seemed to want.

Mr. Cook participated in much of this activity along with Mr. Spater. An application was filed, and as far as I've ever known it wasn't acted upon by the CAB.

Q. When did this take place?

A. I might say I also met with General Eaker in the Los Angeles area on the same project. That would help me fix the time.

- Q. Was it while you were negotiating the Convair [Tr. 3014] 880 contract?
  - A. I'm trying to remember the exact time-
- Q. That is the time you fixed on your deposition, Mr. Rummel.
- A. —if you will give me just a second. It could have been that time.
  - Q. That is the time you fixed in your deposition.
  - A. I see.
  - Q. Was this plane ever developed?
  - A. No. Not to my knowledge.
- Q. Did it ever get beyond an intention so far as you know?

Mr. Sonnett: On whose part?

Mr. Hayes: On anybody's part. It relates specifically to his redirect. He has testified about it as a plane in the development of which Mr. Hughes was active.

The Special Master: Was the application to the CAB made in the name of Hughes Tool?

Mr. Sonnett: No.

Mr. Hayes: I believe it was in the name of TWA if I remember rightly.

Mr. Sonnett: The application was dated May 10, 1956, and as was customary when Hughes con-IT. 30151 trolled the airlines the actual applications were made by the airlines, since it was the carrier.

Mr. Hayes: Under the act, the Hughes Tool Company could not engage in an additional phase of aeronautics such as building airplanes without permission of the CAB. That is the reason the application was finally—was it withdrawn or die? I forgot. I can't remember.

Mr. Sonnett: What happened was that the CAB raised antitrust questions and suggested that they wanted to investigate it and the application was ultimately withdrawn, I think, about a year later.

Mr. Hayes: I think that is an inaccurate statement but I am not going to argue it now.

Mr. Sonnett: It is my understanding— Mr. Hayes: It is not my understanding.

Mr. Sonnett: —of what the CAB records would show.

Mr. Hayes: Yes, the CAB records will show.

Q. But this project never got off the ground, did it?A. No, I don't think so.

[Tr. 3016] Q. This was a blast in the Los Angeles newspapers about it at or about the same time, was there not?

A. Well, yes, there were headlines—I don't remember what they said—concerning the establishment of an aircraft factory by Hughes in Florida rather than Los Angeles.

The Special Master: What are we leading up to here now, Mr. Hayes?

Mr. Hayes: Just pinning down this business of an airplane in the development of which Mr. Hughes was active. As far as I can find up to now there was no such airplane.

The Witness: I don't think the metal was cut on it, if I can save time.

- Q. You don't think what?
- A. Metal was cut on the plane.
- Q. How many plans were made? How many designs did you see? How many blueprints, if any?

Mr. Sonnett: The only thing we didn't get into was the plywood flying boat.

- Q. Can you answer the question?
- A. I didn't see any specific plans. These were primarily discussions with Hughes.

ITr. 3016Al Q. Were any blueprints ever prepared that you know of?

A. Well, I didn't see the blueprints if there were any.

(Tr. 3017) Q. So far as you know, did the Hughes Tool Company ever manufacture jet aircraft for use by airlines?

Mr. Sonnett: Objected to as beyond the scope of the issues before the Special Master, wholly beyond the scope of the direct examination and beyond the scope of any redirect.

Mr. Hayes: I understand the reason for the objection all right.

The Special Master: Overruled.

A. Well, I don't recall Hughes Tool manufacturing air. planes for airline use.

Q. Do you recall Hughes Tool Company ever engaging in the sale of jet aircraft to airlines—

Mr. Sonnett: Same objection. Mr. Hayes: Wait a second.

# Q. —other than to TWA prior to 1961?

Mr. Sonnett: Same objection. Wholly beyond the scope of the direct, the redirect, unrelated in either respect to either of those.

It is an attempt to try to get back into trying the case on the merits. We have been through all this before.

There was a motion, as you may recall, ITr. 30181 that was made on this that Judge Metzner denied before your appointment—

Mr. Hayes: He did not deny on the merits.

Mr. Sonnett: —as Special Master where they sought in effect to get a summary judgment on the motion. It was an opinion.

This is simply an attempt to try to get back in to try the case on the merits. It has nothing to do with the testimony.

Mr. Hayes: It certainly has. This is a proposed finding that was not made by Mr. Rankin.

Mr. Sonnett: We understand one another's views on that. It has nothing to do with this witness' testimony.

The Special Master: I will allow the answer.

#### Rummel-Recross

The Witness: Could the question be read?

The Special Master: Yes, will you read the question back?

(The question was read.)

A. Well, Hughes-I'm not sure I can answer the question categorically because I'm not sure I understand ITr. 30197 it.

I testified earlier that Hughes had exerted efforts and

caused efforts to be exerted to place the Viscounts.

I know he occasionally had airplanes on speculation which he would sell to airlines from the piston area onward at times, and the jets were leased, I think, through his actions to Northeast.

Q. Is that your whole answer?

A. And as I-and additionally Convair-I think this is in the record—approached me occasionally to say to Hughes to release delivery positions so they could sell to other airlines.

Now, that-I think there is a degree, I think, of what you are getting at in that. I'm not sure that the question is subject to at least my own ability to answer it any more thoroughly than I already have in the record.

Q. You understand what a sale of a jet aircraft is to an

airline for use by an airline, do you not?

A. Well-

Is there anything difficult about that concept?

Mr. Sonnett: I must say, Mr. Brownell, ITr. 3020] I think this is highly argumentative and wholly beyond the scope of any redirect.

The Special Master: I think this is about the end of this line of questioning.

Mr. Hayes: It is very close to the end.

Do I know what a sale is?

#### Rummel-Recross

Q. That's right.

Does that form a concept in your mind if you speak of a sale?

- A. A sale as opposed to lease, as opposed to other things?
  - Q. A sale. Just the word "sale."

The Special Master: As opposed to negotiation-

- A. Yes, I know what it is.
- Q. I ask you again, do you know of a single jet aircraft ever sold by Toolco to an airline?
  - A. Other than TWA, of course?
  - Q. That is right.
- A. Well, the six airplanes that went to Pan Am were so nearly a simultaneous transaction as I recall it between the three parties, I don't want to presume to judge legally who sold it. I thought that through Hughes' release of those planes Boeing in a simultaneous [Tr. 3021] transaction made them available to Pan American who bought them.
- Q. And Boeing had to consent or the transaction could not take place?

Mr. Sonnett: Objection as calling for a legal conclusion.

Q. Aside from the Boeing transaction which is well covered in the record, do you know of any sale?

Mr. Sonnett: Of jets?

Mr. Hayes: Yes, that is what I am talking about

A. Well, as I sit here I am not sure if the four 880s that Northeast are now operating were leased or sold. I suppose I knew—

# Rummel-Recross, Redirect

- Q. I said prior to 1961.
- A. Oh, excuse me.
- Q. You have already testified that they were not even completed then.
  - A. Yes. Excuse me.

I know nothing to add to my prior testimony to try to clarify this whole area.

Q. Does that mean that you know of no such sale?

A. Well, it means I know of nothing to add to my prior testimony, Mr. Hayes, to try to be any clearer [Tr. 3022] than I have.

Mr. Hayes: Thank you. You may examine.

Mr. Sonnett: Will you mark as the next TWA exhibit a letter from Raymond Holliday on behalf of the Tool Company to Pan American World Airways dated June 25, 1959, tendering six aircraft to Pan American.

(Letter from Raymond Holliday to Pan American World Airways dated June 25, 1959, marked TWA Exhibit 23 for identification, as of this date.)

Mr. Sonnett: I offer it in evidence.

Mr. Hayes: May I inquire, Mr. Sonnett, if this is the only document having relation to the assignment of contract rights by Toolco to Pan American or are there others?

Mr. Sonnett: I assume there must be others, but I am not interested in those. If you want to offer any others I don't object to it.

This is the offer of the Tool Company to Pan American about which you were just seeking to examine the witness, so I thought it ought to be—

#### Rummel-Redirect

Mr. Hayes: I did not examine him. He ITr. 3023] volunteered information about it.

Mr. Sonnett: I thought it ought to be in the record.

Mr. Hayes: I have no objection, Mr. Brownell, to—what is that exhibit number?

Mr. Sonnett: 23.

Mr. Hayes: But I would like to reserve the right to put in any additional documents that may be necessary by mail relating to this transaction. I don't know whether there are any or not, offhand.

Mr. Sonnett: So long as they are authentic I have no objection.

Mr. Hayes: I am assuming this is authentic. I know it came from the Hughes Tool Company. It is a copy of a copy, obviously.

The Special Master: Received.

# Testimony at Damage Hearing of John B. Connelly

[Doc. 554-11]

[Tr. 3039] • • • JOHN B. CONNELLY, called as a witness by defendants, being first duly sworn by the Notary Public (William Blitz), testified as follows:

# Examination by Mr. Hayes:

Q. Mr. Connelly, what were your positions with The Boeing Company from 1954 into 1961?

A. In 1954, I was director of Contract Administration for the company. And in 1956, the early part of 1956, I was elected a vice president of the company and assigned as general manager of the then Transport Committee, which is now the Commercial—

- Q. Transport what?
- A. Transport Committee.
- Q. Committee!
- A. No, Transport Division. I am sorry. Transport Division.
  - Q. Oh, Division. I thought you said "Committee."
  - A. That is now the Commercial Airplane Division.

[Tr. 3040] Q. As of 1961, you still had that position?

- A. As of 1961—no, as of 1959, my position was changed to vice president and assistant general manager, primarily responsible for Sales and Contracts in support of our product.
  - Q. Is that the position you presently hold?
  - A. That is the position I presently hold.
  - Q. How long have you been with The Boeing Company?
  - A. Since April 1948.
- Q. Will you give us a brief description of the Boeing organization, insofar as dealings with airlines were concerned as it existed in 1955, any changes that took place between then and the end of 1960?

A. In 1955, we had not divisionalized the company. At that time, the, you might say, central organization or head-quarters group were concerned with all the activities of the company, including the beginning of our jet program.

It wasn't until the first part of 1956 that we did divisionalize, and at that point forward all matters pertaining to the Commercial Airplane Division—I will use that term rather than Transport Division, if that is all right—

Q. Certainly.

ITr. 3041] A. (continuing)—the responsibilities in respect to commercial airplane programs were under the cognizance of the Commercial Airplane Division.

Q. Who made up this headquarters group that you men-

tioned in 1955?

A. Mr. William Allen, the president of our company.

Q. Anybody else?

A. Well, he was the principal-

Q. I want to know who the people were who made up the headquarters group referred to as working as a unit, so to speak, in 1955?

A. Mr. Wellwood Beall, senior vice president of the company, Mr. J. O. Yeasting was vice president—Finance, Mr. Fred Landen was vice president—Manufacturing, J. E. Prince was secretary and vice president—Administration, I, as I mentioned before, was director of Contract Administration, Mr. Edward Wells, vice president—Engineering. I believe that covers the principal—

Q. Was there a Mr. Bell or Ball with Boeing at time!

A. Mr. Bell at that time was director of Sales.

Q. Do I understand correctly that this headquarters group, whom you have identified, handled, as a group, assignments within their own group by themselves, possibly by the president, all relations with commercial airlines [Tr. 3042] looking to sale of jets in 1955?

- A. I would say primarily Mr. Allen, Mr. Beall, Mr. Wells and I were involved, primarily in the negotiations at that time.
- Q. Was there any division at that time, 1955, within The Boeing Company, so far as sales to airlines were concerned, as to which Boeing individual would be primarily responsible for particular airlines?
  - A. No.
  - Q. There was not?
  - A. No.
- Q. Each and every person might be called upon to negotiate with each and every airline?
  - A. That is correct, as the occasion arose.
  - Q. And did so, in fact?
  - A. And did so, in fact.
- Q. You mentioned in 1956 a divisional setup was installed or instituted. What was the effect of the institution of that divisional setup, so far as the relations with commercial airlines are concerned?
- A. Well, the effect was that primarily all relationships with the commercial airlines became under the cognizance of the Commercial Airplane Division.

This did not mean that there was not coordination [Tr. 3043] with Mr. Allen, Mr. Beall in respect to certain matters.

- Q. That was the division that you headed up at that
  - A. That is correct.
- Q. At that time, did any division come into existence within the company as to which individuals would primarily deal with particular airlines?
- A. No, except within the division, and this was more or less, again on the basis of individual assignments.

By way of explanation, we were in the course of building up within the division adequate sales capability, contract

capability and so forth. And we were in the throes of building these things up. And until such time as those ends could be accomplished, we had to resort to assigning people we thought were best qualified to handle certain assignments.

Q. Were these subordinates of yours or were such assignments also made to the men whom you described as making up the headquarters group?

A. I would say that as far as the headquarters organization is concerned, Mr. Allen and Mr. Beall continued to devote considerable time to the commercial airplane program.

Q. By "the commercial airplane program," you mean [Tr. 3044] including sales to commercial airlines?

A. That is correct.

- Q. Was there any further change in the Boeing organization after 1956, again insofar as the sales to commercial airlines were concerned?
  - A. In organization?
  - Q. That is right.

The Special Master: Up to the end of 1960? Mr. Hayes: That is right.

A. I can't recall specific dates, but the only change that has occurred or did occur, occurred along about 1959 when the activities of the division became expanded to the point where it was necessary to strengthen the division from a management standpoint.

And at that time, Mr. Yeasting, who was a director of the company and vice president of Finance, was reassigned as vice president-general manager of the Commercial Airplane Division. And I was assigned, as I mentioned before, the primary responsibility for Sales, Contracts and Support.

- Q. Is Mr. Yeasting still the general manager of the Airplane Division?
  - A. Yes, he is.
  - Q. 1959 you said that took place?

[Tr. 3045] A. 1959.

- Q. Who-
- A. To the best of my recollection.
- Q. Yes. Who first spoke to you, Mr. Connelly, about the giving of testimony in this action?
  - A. Mr. Robert Rummel.
  - Q. When was that?
- A. I can't recall the exact date. I can remember the occasion in that we had a very large group of TWA people visit us in Renton, Washington, for the purpose of discussing equipment programs, requirements and to visually inspect the production line of airplanes in the course of final test and preparatory to delivery.

It was a very large group, and we used a bus to take them from our main office in the Commercial Airplane Division to the factory.

And Mr. Rummel asked me to remain in the bus—or asked me if I would—he had something he wanted to speak to me about.

- Q. Can you fix the approximate time of this conversa-
  - A. I am sorry, I can't.

The Special Master: The year.

- Q. When I say "approximate time," I am not thinking [Tr. 3046] of an exact date, Mr. Connelly.
- A. I realize that. I can't-
- Q. Was it a year ago, two years ago, three years ago?
- A. Oh, no, I would say it would be three years ago at

- Q. Proceed. Mr. Rummel asked you to remain in the bus.
  - A. Yes. And at that time he stated that-
  - Q. Was it just Mr. Rummel and yourself?
  - A. Just the two of us, that is right.
  - Q. Tell us the conversation.
- A. He stated—again, this is to the best of my recollection—that TWA intended to bring action against the Hughes Tool Company relative to damages they felt they had suffered, and asked whether I would be willing to make a deposition in respect to what our practices, policies, procedures had been in respect to allocation of delivery positions and other matters relating to individual negotiations with particular airlines.
- Q. He said that TWA was contemplating bringing an action against Toolco?
  - A. Yes.
- Q. Was this before the action was instituted, this [Tr. 3047] conversation? The action, I can tell you, was instituted in 1961.
  - A. Well, it had reference to the present hearings.
- Q. You knew an action had been instituted, did you not?
  - A. Oh, yes, yes.
  - Q. Is that all Mr. Rummel said to you?
  - A. Yes.
  - Q. What did you say to him, Mr. Connelly?
- A. I said this was a matter I'd have to discuss with our own company people and with our counsel before I could give him a reply as to whether I would or would not.
- Q. Is that all that occurred during that conversation, so far as you can recall?
- A. That is all I can recall, as far as I can recall in connection with that particular point, yes.

- Q. What particular point, Mr. Connelly?
- A. The one we are discussing.
- Q. You mean your availability to testify in the case?
- A. That's right.
- Q. Did you get into any discussion of the details of Boeing's sales policies and practices at that time [Tr. 3048] with Mr. Rummel?
- A. I don't recall having had any discussions in respect to what our policies were at that time, no.
- Q. Did he tell you what he understood the Boeing policies and practices to be at that time?
- A. He might have, but I do not recall him having done so.
  - Q. No recollection at all?
  - A. No, I do not have any.
  - Q. What did you do after that?
- A. I did check with our people and with our counsel, and was advised that I was certainly not obligated to volunteer to make a deposition, but that in view of the fact that it had been very definitely stated that they contemplated or intended, I should say, going forward with the proceedings, that I could be subpoenaed, and I decided that probably the greater convenience to Boeing and to myself would ensue by going forward with a deposition.

Q. With whom did you check in the company?

- A. I checked with Mr. Beall and with our counsel. As I recall, Mr. Allen was not available. He was out of the city at that time.
  - Q. Can you identify the counsel?
  - A. Mr. Harold Olsen.

ITr. 3049] Q. You mentioned that this was on an occasion when there was a large group of TWA people present at Renton to look at certain planes, production line and so on.

What planes were you referring to?

A. Well, the discussions centered around additional quantities of long-range aircraft, particularly our Model 707-320B, 707-320C.

We did discuss other models with them, a 720B, and future programs we had in mind, which I can't recall in detail at the moment.

But their primary interest was in the two models I first mentioned to you.

- Q. Was that before the days of the 747?
- A. Well in advance of that.
- Q. Did TWA buy any planes of the models that you mentioned?
  - A. Yes, subsequently they did.
  - Q. How long after?
- A. As nearly as I can recollect, it would be in 1960 or 1961, that area.
- Q. 1960 or 1961. And your conversation with Mr. Rummel took place before then?
- A. No, it was subsequent to the meeting that I had with Mr. Rummel at that time. I am not confident—I can't Tr. 3050] really—they could have placed the order before then.
- Q. What is your present recollection as to whether TWA ordered additional planes as a result of or after, rather, the visit of the TWA team to which you referred!
  - A. Well, they have ordered additional planes since then
- Q. No, of the two models that you said they were particularly interested in.
  - A. Of the two models, yes.
  - Q. Do you know how many they ordered?
  - A. No, off-hand I can't remember.

Q. Do you know how long after the conversation between Mr. Rummel and you took place was it that they [Tr. 3051] placed the order?

A. As I mentioned before, they could have placed the first order for those two models before that time. You must understand these orders have been coming in year by year. I can't tie it down to a specific time. I am sorry, I can't do it.

Q. I know you mentioned that they might have placed the first orders for the planes earlier, but in your prior testimony you referred to additional planes that they were considering. I want to know if the orders of the additional planes of the models to which you referred were received after your conversation with Mr. Rummel or not?

A. Well, the facts are that they did order additional planes after that in successive years.

I wouldn't attach in my own mind too much importance to that particular visit, as to why they bought the airplanes, because they had already, as I recall, bought these airplanes, these types of airplanes.

- Q. These types?
- A. Right.
- Q. But is it your testimony—I understand and I think it is—I want to get it clear—that after your conversation with Mr. Rummel TWA bought additional planes of ITr. 3052 those types?
- A. Yes, and they have over a period of years, in successive orders.
- Q. When you checked with the Boeing people with respect to Mr. Rummel's conversation, did anybody mention as a consideration favoring your giving an affirmative answer to Mr. Rummel that Boeing did not want to offend TWA, who was a prospective customer?
  - A. Absolutely not.

- Q. Not mentioned. Have you told us in substance the conversations you had when you checked with the Boeing people with respect to your testimony?
  - A. I am sorry. Would you repeat that, please?
- Q. Have you told us in substance the conversations you had with the Boeing people when you checked with them as to Mr. Rummel's request or is there anything additional you want to add?
- A. Well, I could add this: the advice of Mr. Beall, who I checked with, was that this is a matter that should be resolved with counsel; that we certainly were neutral in a situation such as this, and it was just a matter of how it would least inconvenience the company—
  - Q. Which company?
- A. The Boeing Company. (continuing)—and its ITr. 3053] people in respect to these proceedings.
- Q. It was Mr. Olsen, then, who I assume told you, in substance, that you could be subpoenaed—
  - A. Yes.
- Q. (continiung)—and it was after that that you decided not to wait for a subpoena, but to go ahead with the deposition, such as Mr. Rummel asked for?
  - A. That is correct.
  - Q. Did you then communicate with Mr. Rummel?
- A. I can't recall doing so. To the best of my memory, I believe we were again approached.
  - Q. By whom?
- A. By Ed—by Mr. Rummel as to whether I had made a decision.
- Q. You say "we were approached." Who was approached?
  - A. I was approached.
  - Q. Who approached you?
  - A. Mr. Rummel.

- Q. How long after, so far as you can recall, his first conversation with you did he make this second approach?
  - A. Several months.
- Q. This is still a matter of two to three years back, so far as you can recall?

[Tr. 3054] A. As best as I can recollect.

- Q. Was this a personal meeting with Mr. Rummel or a telephone conversation, so far as you can recall?
- A. I believe the question was asked by telephone, and it was followed by another meeting with a group of people.
- Q. Let us take the telephone conversation first. Tell us what each of you said to the other, so far as you can recall, in the course of that telephone conversation.
- A. As I recall, Mr. Rummel asked me as to whether I had reached a decision as to whether I would make a voluntary deposition or not. And I said I had and that I would make a voluntary deposition.
  - Q. Was there anything else in the conversation?
- A. On that particular point, I cannot recollect any other discussion.
- Q. Was there any conversation between you at that time as to what the content of your deposition would be?
  - A. Not at that time, as I recall.
- Q. Had Mr. Rummel at any point told you that he was going to be a witness in this proceeding?
  - A. Yes.
- ITr. 3055] Q. Did he tell you that in the course of his testimony he was going to cover the subject of Boeing's sales policies and practices?
- A. Not at that particular time. This occurred at the time we had discussion in the bus, and very generally—
  - Q. He did tell you at that time that-
- A. (continuing)—very generally that it did involve the relative delivery positions as to TWA and Pan American

and American in particular. That would be a part of his deposition.

- Q. Did he go into any details at that time as to what he planned to testify to?
- A. Not that I recall. It was a very general conversation.
- Q. Did you make any comment on what the Boeing policies and practices you would testify to were at that time?
  - A. No, sir.
- Q. Have you given us all of the telephone conversation that you can recall that you had with Mr. Rummel at the time you told him you had decided voluntarily to give a deposition?
- A. As I recall, it was a simple question and a simple answer.

[Tr. 3056] Q. You said that was followed by a meeting at which others were present?

- A. That is correct.
- Q. How long after did that meeting take place?
- A. This would be several months following the telephone call.
  - Q. Where did the meeting take place?
  - A. It took place in my office in Renton, Washington.
  - Q. Who else was present?
  - A. Mr. Rummel had a member of counsel with him.
  - Q. Do you remember who he was?
  - A. Corey-

Mr. Sonnett: Dunham, D-u-n-h-a-m.

The Witness: Yes, that is correct. And I had with me Mr. Ed Wells, Mr. Olsen and I believe Mr. Spalding, who was then our director of Contract Administration at the Commercial Airplane Division.

I can't be certain, but I feel reasonably confident he was there at that time.

- Q. Anybody else?
- A. No, sir.
- Q. This meeting was arranged in advance of its taking place, I assume?

[Tr. 3057] A. Yes.

- Q. Tell us what took place at that meeting, Mr. Connelly? Who said what, insofar as you can recall?
- A. Well, Mr. Rummel became specific as to the matters which he proposed to include in his deposition as being his understanding of what our policies and practices in respect to airplane delivery positions were, and asked me in my deposition to state in some manner as to what our practices and policies were and had been.
- Q. Let us stay with Mr. Rummel for a moment. You said be became specific. What did he say at that time?
- A. Well, generally that the positions that TWA actually were able to obtain could have been improved had the Hughes Tool Company acted earlier, and given consideration to possibly a greater number of aircraft to put them in a better competitive position.
  - Q. Did he mention dates?
  - A. No, sir.
- Q. Did he mention the subject of how Boeing would allocate delivery positions among two or more airlines?
- A. Only his belief from knowledge from having worked with us, negotiated with us over a long period of time, what his understanding was of our policies and practices.
  - Q. What did he say his understanding was?

ITr. 30581 A. That we gave consideration from a standpoint of any priorities we might grant to those who acted promptly, placed orders early or demonstrated a very definite interest in proceeding with negotiations early, and were prepared to order a fairly large quantity of airplanes.

- Q. Did he say anything as to the way delivery positions would be allocated among particular airlines, his understanding that is as to how they would be allocated?
  - A. No, not to my recollection.
- Q. Did he have with him any written documents setting forth what his understanding was?
  - A. I don't recall his having any.
- Q. Is there anything else that Mr. Rummel said that you can recall?
  - A. No, I cannot.
  - Q. Who else said anything at this meeting?
- A. As far as the Boeing people were concerned, very little was said, and nothing I recollect of any substance. We were listening to what Mr. Rummel and Mr. Dunham had to say.
  - Q. What did Mr. Dunham have to say?
- A. I can't recall other than his comments were more or less along the same line as Mr. Rummel's.

ITr. 30591 Q. Did you make any comment with respect to Mr. Rummel's understanding of what Boeing would do?

- A. I don't recall having said so, but I could very well have said that generally it was our policy and practice to award some priority to those operators who stepped up first and who ordered, or over a long period of time would order under reasonable circumstances a large quantity of airplanes.
  - Q. Did you elaborate on that in any way?
  - A. I cannot recall having done so.
- Q. At this meeting, was there any discussion as to what Boeing actually did with respect to contractual delivery positions awarded to Pan American, American and TWA!
- A. None other than the inference of Bob's understanding that we were giving priority to those who stepped up early and who ordered a fairly large quantity of airplanes.

- Q. Did his understanding identify Pan American and American?
- A. Pan American and TWA—or American were mentioned in the conversation, yes.
- Q. Did you express your agreement or disagreement with whatever he said with respect to Pan American and American?

[Tr. 3060] A. Only in reference to what our practice and policy had been.

- Q. What did you say in that regard?
- A. That it had been our practice and policy to give some priority to those who stepped up early and ordered a fairly large quantity of airplanes.
- Q. Is it correct to say that the discussion at this meeting was in generalities rather than specifics? By that I mean, that you did not get into the details of actual delivery dates?
  - A. No, sir, we did not.
- Q. Did anybody else representing Boeing at this meeting have any comment to make? If so, what was it?
  - A. I cannot recall any other comments of substance.
  - Q. What happened after that? What was the next step?
- A. There was a third meeting at my home and the reason it was my home, I was recovering from an illness.
  - Q. How long after was that?
- A. This, again, was several months after the last meeting I referred to.
- Q. How far back would this be now? Can you give us an estimate?
  - A. No, I am sorry, I cannot.
  - Tr. 3061] Q. A year ago, two years ago, or more?
- A. I can't even be that explicit. It was several months after that prior meeting.

- Q. Who was present at that meeting, Mr. Connelly!
  A. At that meeting, Mr. Rummel and Mr. Dunham and
  Mr. Olsen and myself.
- Q. Will you tell us what was said at that meeting, please?
- A. As I recall, Mr. Rummel and Mr. Dunham had a statement of the actual deliveries that we had made to Pan American, American and TWA, and a rough reallocation, as they would see it, in respect to how these deliveries might have been otherwise had certain actions been taken by the Hughes Tool Company toward earlier commitments and for larger quantities of aircraft.
- Q. You said you had a statement of delivery positions and a rough reallocation of those delivery positions provided certain things had been done by Hughes  $T_{00}$  Company.

Was that in the same form as the TWA statement of improvement of delivery positions which is attached to your prepared statement, TWA-3?

- A. I can't recall whether it was at that time.
- Q. I say the same form. I don't mean as to every [Tr. 3062] single detail.
- A. As to content? No, it was a very abbreviated form, as I recall it.
- Q. Do you recall whether the so-called reallocated delivery dates were the same as appear in TWA's statement of improvement of delivery position?
  - A. No, I don't recall that they were.
- Q. Proceed with what happened at the meeting, please, Mr. Connelly.
- A. Well, we discussed this statement of actual dates as they presented it, and in connection with that I stated that we would have to check our records to verify the accuracy of the actual deliveries.

And, secondly, in respect to the allocation, I brought up several matters relating to Boeing's problems in respect to variances in configuration of the aircraft, components installed in the aircraft, all of which would have to be taken into consideration in respect to any reconstruction, even under these hypothetical assumptions.

Q. Which were the considerations that you mentioned over and above those you have already told us about?

A. Let's see, I mentioned variances in configuration.

Q. That's right.

[Tr. 3063] A. Installation of different systems, et cetera.

Well, an obvious one would be that—first, we must give primary consideration to our own production line in that our capability to deliver airplanes early as a program and in adequate quantities to establish a firm base for a program must be given consideration, primary consideration.

Q. What does that mean, Mr. Connelly? Can you explain that?

A. Well, it means that we cannot go forward with an efficient production line, unless we have absolute control of that program. We cannot let individual customers dictate requirements which would prevent us from delivering airplanes under a program—I am not speaking about customers now—but under a program as early as it was possible for us to do so in a configuration that we felt on our own, in general, met the requirements of the majority of the airlines.

What I am saying is if a customer should insist upon a degree of changes in the airplane, which would delay our program, this was something that we could not accede to. So these things must be given consideration.

Q. Was there any discussion about these points you brought up?

ITr. 3064 A. Well, we did discuss certain equipment items and certain differences in configuration, as between our basic airplane specification and the negotiated TWA specification.

Q. What was said in that regard, Mr. Connelly?

A. Well, that there were certain items incorporated or scheduled under the specification to be incorporated in TWA's airplane that would probably have had the effect, had that been the first airplane, for example, of a delay in our overall program.

Q. Would probably have been the effect if that had been the first airplane—would you please explain that? I am not at all sure what you mean.

A. Well, the best way to explain this, I guess, is to say that we must come up first, obviously, with a basic airplane and build up a projected program based on that And we must give consideration to the fact that we cannot deviate very greatly from that basic specification and meet our program objectives.

Q. By "program objectives," are you including delivery positions?

A. Yes, sir. I mean, we go through the process of design, manufacture, flight test, certification and delivery.

ITr. 3065 So, the buildup of that airplane is very important to us, obviously, in meeting these, you might say, benchmarks down the line.

Q. Let met state what this means to me and you can tell me whether I am right or wrong.

A. Yes, sir.

Q. That the airline whose specifications and requirements more closely met the Boeing basic specifications

#### A-995

# Connelly-Cross

would get delivery preferences over an airline whose requirements departed in a greater degree from the Boeing specification. Is that what you are saying or is it not?

A. Well, that might be a result. In effect, this more probably reflects a compromise on the part of an operator who is—who gives greater—or places greater emphasis on early delivery and perhaps some changes in the airplane that are not as important as early delivery.

Q. How would that operate, can you tell us?

A. Well, every airline has its own desires and what it considers to be its own requirements in respect to instruments, arrangement of instruments, systems in the airplane and so forth. And if these were permitted to reach the ultimate, why, it could be a serious disruption to any production line.

These points have to be brought out in negotia- [Tr. 3060] tion. And in most instances we have found that the majority of these changes are compromised in order to retain early delivery positions, rather than suffer a slide in delivery in order to incorporate them.

- Q. But to the extent to which they are not compromised, they would contribute to later delivery positions; is that right?
  - A. That would be the result, yes.
- Q. What else was said at this meeting at your home, Mr. Connelly?
  - A. I believe that covers the—everything I can remember.
- Q. Did either Mr. Dunham or Mr. Olsen make any contribution to the conversation?
- A. Nothing that would deviate from what I have said, sir.
- Q. Was there anything said as to who prepared this written document that Mr. Rummel had with him?

- A. I can't recall that anything was said as to whether either Mr. Rummel or Mr. Dunham had prepared it.
  - Q. Who presented it to you?
  - A. It was presented to me by Mr. Rummel.
  - Q. What was the next step?

ITr. 3067 A. The next step was a later meeting several months later when—the same parties, Mr. Dunham, Mr. Rummel, Mr. Olsen and myself—we were presented with a more complete statement as to delivery positions as they actually occurred, and the reallocation of those positions under the assumptions that the Hughes Tool Company had ordered the airplanes at approximately the same time as Pan American and American, and in substantially the same quantities.

- Q. In the meantime, between the first meeting at your home and the meeting as to which you are now testifying, had you checked the actual delivery positions in the document that had been handed to you?
  - A. I did not do so personally, but I had-
  - Q. You had a check?
  - A. I had one of our people check them, yes.
  - Q. Did you review reallocated delivery positions?
  - A. Yes.
- Q. Did you have any communication, directly or indirectly, with TWA representatives between the meeting in your home and the later meeting?
  - A. I recall none.
- Q. Where did this meeting as to which you are now testifying take place?

[Tr. 3067A] A. I could be mistaken that there was a meeting. There was either a meeting or it was sent to us in the mail.

I am sorry, I can't remember specifically.

Anyway, this material was placed in our hands.

[Tr. 3068] Q. Can you now fix the time that you received this material?

- A. I'm sorry, I can't. It was several months after the—every one of these was inter-spaced by several months.
  - Q. That may be, but I am trying to find out-
  - A. I realize that.
- Q. —whether it was a year ago or two years ago that you received this material or more.
- A. Oh, I would say approximately a year, a year and a half ago.
- Q. Was the material you then received the same as the rough material, the same in substance as the rough material that had previously been delivered to you at your home?
- A. No, it was more in the format as attached to my deposition. I say it was more in the format.
- Q. Was there a text of your proposed deposition sent to you also?
  - A. Yes, there was.
- Q. Was that in the same form roughly as what is now TWA Exhibit 3?
  - A. That is my deposition?
  - Q. Yes.
  - [Tr. 3069] A. Roughly so, yes.
- Q. Were the delivery dates that were set forth the same as those set forth in the document that had been delivered to you at your home?
  - A. That I cannot recall.
- Q. Do you know if the reconstructed delivery dates were the same?
  - A. The same as what, sir?
- Q. As those that had been set forth in the document that had been delivered to you at your home.
  - A. You mean the reallocated?

- Q. That is right.
- A. That also I cannot remember.
- Q. Do you recall having had them checked or checking them yourself?
  - A. Not the reallocation figures, no.
- We did check the actual delivery dates.
- Q. You checked them in connection with the first document that you had received?
  - A. Yes, and with the second one.
  - Q. With the second one, too?
  - A. Yes, sir.
- Q. But you did not check the reallocated dates in the two different documents with each other?

ITr. 30701 A. No.

- Q. Were the assumptions that were set forth in the document you later received the same as those set forth—the same in substance, I mean—as those set forth in the document you had received at your home?
- A. I can't recall whether they were the same or not the same.
- Q. From whom did you receive this document that we are now talking about, this draft of your proposed deposition, and the TWA statement of improvement?
- A. I believe this was sent to Mr. Olsen's office. And I will have to go back and say again I mentioned I was not sure whether it was a meeting or it was sent to us by mail. I am more confident that it was sent by mail. And it was sent, I believe, to Mr. Olsen's office.
  - Q. Did you receive it from Mr. Olsen?
  - A. Yes.
  - Q. Was there any accompanying letter?
  - A. From TWA-from Hughes?
  - Q. Not from Hughes.
  - A. I mean from TWA. Excuse me.

I believe there was a letter of transmittal with it which recited that this as they understood it [Tr. 3071] more or less was more in conformity with the production problems that we had discussed and with the practices and policies of the Boeing Company and the allocations of positions than had the first discussion or rough outline set forth.

- Q. Who sent the letter? Who wrote it? Whose letterhead ?
  - A. I cannot recall it.
- Q. Prior to the time that you received this revised document, had you had any communications with Mr. Rummel? I mean between the time of the meeting at your home and the time you received this revised document.
  - A. Any meeting with him?
  - Q. Communications of any kind.
- A. Well, I undoubtedly did, because we have a great deal of business transactions of other natures.
  - Q. No, no, I mean with respect-
  - A. In respect to that?
  - Q. -to your proposed deposition.
  - A. No. sir.
- Q. Do you know whether Mr. Olsen had any communication with either Mr. Rummel or anybody from the firm representing TWA?
  - A. No, I do not know.
- Tr. 3072 Q. Did you have any communication with Mr. Dunham or any other member of the Cahill firm?
  - A. No.
- Q. You received this draft of proposed deposition. What happened then?
- A. We checked over the assumptions that were contained in the allocation, and we made several revisions to the assumptions. I don't recall having made any in respect to the reallocation. And satisfied ourselves—or I satisfied

myself that it was consistent with—under those hypothetical assumptions with what might have resulted had these things all occurred based upon our basic business practices and policy.

- Q. Do you recall what revisions you suggested in the assumptions?
- A. There were several, but I cannot remember what they were.
  - Q. You cannot remember any of them at all?
  - A. No, sir.
- Q. How did you communicate those suggested changes! To whom did you communicate them?
- A. As I recollect, we revised the deposition, including these changes, and I signed it.
- Q. When you say "we revised," who revised, Mr. [Tr. 3073] Connelly?
  - A. I revised-I reviewed it, Mr. Olsen reviewed it.
- Q. Did you work together in this connection, Mr. Olsen and yourself?
- A. In the final analysis we communicated together on it, yes.
- Q. Before you signed it, did you or did Mr. Olsen communicate a copy of your revised deposition to any representative of TWA, do you know?
  - A. I do not know.
  - Q. Have you any idea of that at all?
  - A. No.
- Q. How long did it take you to make the revision both in your deposition and in the reallocation or the assumptions that are part of the reallocations?
  - A. Well, it took several days.
- Q. How long after that so far as you recall did you sign and swear to it?
  - A. Very shortly thereafter.

- Q. How long ago was this?
- A. I hate to be so vague, but I can't recall, sir.
- Q. A year ago, a year and a half ago!
- A. I would say about a year ago.

[Tr. 3074] Q. Your prepared statement indicates that it was sworn to by you on March 8, 1966. Is it your recollection—

- A. A pretty poor guess on my part then, wasn't it?
- Q. You may have signed another one before then?
- A. I only signed one.
- Q. After you signed it, was it then sent to anybody? If so, to whom and by whom?
- A. As I recall it, it was rushed to Mr. Olsen's office and presumably was forwarded from there.
- Q. Did you have any further communication with anybody in connection with your statement after that?
  - A. Only very recently.
  - Q. Tell us about that, please.
- A. Just a couple of weeks ago Mr. Forrow visited us. Mr. Forrow, Mr. Olsen and I reviewed the deposition.
  - Q. Your statement?
  - A. My statement, that is correct.

I think the general purpose of the meeting was to acquaint me with how the proceedings were conducted and who probably would be present, perhaps types of questions that might be asked, that sort of thing.

[Tr. 3075] Q. Have you told us the whole conversation so far as you can recall it that took place two weeks ago?

- A. I believe that covers everything, sir.
- Q. Prior to the time you signed your statement, Mr. Connelly, did you check either the assumptions or the real-located delivery dates or the text of your own statement with anyone in Boeing other than Mr. Olsen?

- A. Yes, I sent it down to our legal group within the company, our Contract Administration Department for final review of the dates, particularly again were rechecked, the actual delivery dates, and for any comments that they might have in connection with the deposition.
  - Q. Did you get any comments from them?
- A. Nothing other than it was their opinion that it satisfactorily represented what our policies under these various assumptions might well have been.
  - Q. Did you check with anybody else in Boeing?
  - A. No, sir.
    - Q. None of the officers?
    - A. None of the other officers, no, sir.

(Tr. 3076) Q. When did TWA begin negotiating for the the 747s, Mr. Connelly?

Mr. Forrow: Objection, Mr. Special Master, outside the scope of Mr. Connelly's direct examination.

Mr. Hayes: Certainly not. He made this statement in March of 1966, and it is quite relevant.

The Special Master: You may answer.

- A. Your statement was when did they start negotia-
  - Q. That was my question.
- A. Well, I would like to define what we might say we think the start of negotiations would mean.
  - Q. All right.
- A. That is when a definite interest is manifested and when the airline indicates an interest in going forward with a review of the specification for the airplane, performance documents, et cetera.

And on that basis, I would say that their [Tr. 3077] interest—that negotiations we would consider started in January of this year.

Q. Prior to that, had there been efforts—approaches, rather—by Boeing to TWA with respect to the 747?

A. Only in respect to what we were thinking about as to an airplane of that type.

We had not indicated in any way that we were considering seriously going forward with it, beyond our technical interest in an airplane of this type.

- Q. Aside from your prepared statement, Mr. Connelly, and the conversations you have told us about in connection with it, were you a party at any time to any discussions with a TWA representative with respect to this lawsuit?
  - A. No. sir.
  - Q. Never at all?
  - A. No, sir.
- Q. Is any payment of any kind being made to you personally, other than your expenses, of course, for your appearance here as a witness?
  - A. Not that I know of.
- Q. In connection with the preparation of your statement, Mr. Connelly, were you supplied a copy of Mr. Rummel's prepared statement in this case, other than [Tr. 3078] the particular portion which is attached to your statement?
- A. Well, a great deal of material was made available to us. As far as I am concerned personally I read one page, not of his deposition, but this had to do with a portion of the cross examination. And I did that only because someone brought it up from the Contracts Department and he said he thought I ought to read this.
- Q. I am speaking of the time prior to the cross examination when your statement was being prepared, were you supplied with any portions of Mr. Rummel's prepared state-

ment other than what is attached to your prepared state-

A. No, sir.

Q. Since you mentioned this cross examination, what was the page you read? What was it about?

A. It had something to do with what personal relationship there might be between Mr. Rummel and myself.

Q. Do you know whether copies of Mr. Rummel's statement, prepared statement, other than the portion attached to your statement, were supplied to Mr. Olsen or any body else in Boeing?

A. Yes, it was.

[Tr. 3079] Q. It was supplied?

A. Well, I can't be specific as to what—as I say, a tremendous amount of material.

Whether this included the deposition Mr. Rummel made or only the reporting of the cross examination, I can't say.

- Q. The reporting of the cross examination could not have predated your swearing to your statement?
  - A. No, that's-
  - Q. I'm speaking of material prior to that.
  - A. That is correct, no. This is more recent than that.
- Q. Prior to your statement being prepared, do you know if a copy of Mr. Rummel's prepared statement was supplied to Mr. Olsen or anyone else?
  - A. No, I do not.
- Q. What is this tremendous amount of material you referred to that was supplied, and to whom was it supplied!

[Tr. 3080] • • • A. I can't identify the material, except I do not know that it contained a good deal of the reporting of the cross examination.

#### A-1005

# Connelly-Cross

- Q. To whom was it supplied?
- A. I believe it must have gone to our counsel.
- Q. You mean Mr. Olsen?
- A. Well, or his office. And then referred to our contracts people.

I had imagined that this was a two-way street, that a great deal of information was being asked of us, and in return we were receiving back some of this cross examination and perhaps other material. I don't know.

- Q. Did anybody report to you what the content of any of this material was?
  - A. Nothing beyond that one page I referred to.
- Q. Do you know whether anybody reviewed the cross [Tr. 3081] examination of Mr. Rummel?
- A. I think some of our contracts people must have, yes. The material was there.
- Q. Did you have any conversations with them as to the content of the cross examination?
- A. No, sir, except that one item that was brought to my attention.
- Q. I show you, Mr. Connelly, TWA Exhibit 2 which is the prepared statement of Mr. Rummel in this action.

Could you tell me, please, if you have ever seen that docu-

- A. No, sir, I do not recognize it.
- Q. You do not recognize it?
- A. No, sir.
- Q. In connection with this statement attached to your prepared statement and headed "TWA's Statement of Improvement of Delivery Positions," were you at any time told the purpose for which TWA intended to use that statement?
- A. Well, indirectly in view of the conversations we had the purpose was to demonstrate that TWA was damaged

by reason of not having competitive equipment early enough or in sufficient quantity.

Q. Who told you that?

[Tr. 3082] A. Mr. Rummel.

Q. When did he tell you that?

A. He told me—it could have been mentioned at that first meeting. I don't know.

But it certainly was at the second meeting I referred to.

- Q. Did anybody else ever discuss this subject with you, that is, the purpose for which the statement of improved delivery positions was to be used?
  - A. No, sir.
  - Q. Only Mr. Rummel?
  - A. Right.
- Q. Did he tell you that TWA intended to claim damages for each day's delay as it would appear to be a delay from the comparison of the actual delivery dates and the reallocated delivery dates?
- A. I don't recall him ever having said damages for each day, but damages in respect to the overall.
- Q. Did he say they were claiming damages with respect to the delivery dates of each plane?
  - A. Is this again on a day-by-day basis?
  - Q. Yes, a contrast between the two dates.
- A. He never mentioned anything, to my knowledge, on a day-by-day basis, although that's one way of ITr. 30831 calculating it, obviously.
- Q. Did he tell you how much TWA was claiming for the supposed failure to get the Boeing planes earlier?
  - A. No, sir.
  - Q. He never mentioned amounts?
  - A. No.

#### A-1007

### Connelly-Cross

- Q. In Paragraph 3 of your prepared statement-
- A. May I refer to it?

Mr. Hayes: Maybe Mr. Connelly should have a copy of his statement in front of him.

Q.—which appears on page 4, the second sentence referring to the statement of improvement of delivery positions, you state that the statement is a reasonable estimate of the improvement in delivery positions which TWA would have obtained based upon the foregoing.

By the word "reasonable," do you mean that that's what Boeing probably would have done?

- A. I don't think anyone can ever say exactly what would happen, but that is a reasonable probability in my opinion.
- Q. A reasonable probability that it might have happened, is that what you mean—
  - A. That it might have happened.
  - Q. -by reasonable?
  - Tr. 30841 A. Yes.
  - Q. And is that all you mean by reasonable?
  - A. That's all I mean by it.
- Q. Referring again to this reasonable, to what is it that you are referring there? Are you referring to the reallocated dates or are you referring to the assumptions or are you referring to both of them?
- A. Well, this is directed primarily if not entirely to the reallocated dates.
- Q. Do you mean by that that you are not testifying that the assumptions contained in the statement of improvement of position are also reasonable?
  - A. In part they are, yes, sir.
- Q. Why don't we look at them? You tell us what you consider reasonable and which are not.

They begin on page 2 of the statement of improvement.

The Special Master: I don't believe you are referring to the page that Mr. Hayes is referring to.

- Q. Page 2 of the improvement. The attachment.
- A. Oh, I'm sorry.
- Q. Those are the assumptions.
- A. I would like to say that the assumptions that ITr. 30851 I referred to, Mr. Hayes, are those assumptions contained in my deposition.
- Q. No, I am talking about the assumptions contained in the statement of improvement of delivery position.

Is it your testimony that those assumption are also reasonable, or are you limiting yourself to the reasonableness of your assumptions and the reasonableness as you already explained it of the reallocated dates?

ITr. 3086] • • • Q. If you do understand, go ahead and answer it.

- A. Yes, the sentence which you have read which is over on page 5—
  - Q. That is right.
- A.—based on the foregoing I assume that referred to the assumptions made in my deposition, sir.
- Q. Let me ask you, are you making any statement as to the reasonableness of the assumptions contained in TWA's statement of improvement of delivery positions, pages 2 and 3 thereof?
  - Mr. Sonnett: Other than to the extent reflected in the witness' own statement? That is where the confusion is.

Mr. Hayes: There is no confusion. I am asking a very simple question.

Mr. Sonnett: I don't now which way the witness is to take it.

Mr. Hayes: I am certain Mr. Connelly [Tr. 3087] will tell us if he does not understand.

Mr. Sonnett: I don't understand.

- A. I must confess I don't, sir.
- Q. Do you have before you pages 2 and 3 of TWA's statement—
  - A. I have them right here, yes.
  - Q.—of improvement of delivery positions?
  - A. Yes.
- Q. By the statement you made in Paragraph 3 that TWA's statement of improvement of delivery position is a reasonable estimate, et cetera, were you referring only to the reallocated delivery dates or were you also referring to the assumptions on pages 2 and 3?
  - A. I now understand the question.
  - Q. Fine.
  - A. I was referring to the allocation portion only.
  - Q. You were not covering the assumptions?
  - A. No, sir, I was not.
- Q. By your statement that the delivery allocations were reasonable, were you intending to testify that Boeing would have agreed to deliver TWA's aircraft on the dates shown had the TWA order been placed at about the same time as Pan American's and American's?

[Tr. 3088] A. No, I cannot say that we would have agreed that that would happen.

I say it is a reasonable estimate of what we could have agreed to.

- Q. But not that you would have agreed to?
- A. I can't—there are too many other factors involved.

- Q. When you are talking about TWA's orders, do you have in mind any particular number of planes, or did you have in mind any particular number of planes that TWA would have ordered, of both series, by the way?
- A. Well, Pan American ordered 20 and American ordered 25. We would look upon TWA as being an airline that competitively should have approximately that number of airplanes as a minimum, being both in the international and domestic market.
- Q. So you are thinking of roughly the same number of planes among all three carriers, is that it? Is that what you had in mind?
- A. We would have thought that that would be a reasonable first order.
- Q. I think you said that American ordered 25. They ordered 30, didn't they?
  - A. They had a right to cancel five.

ITr. 30891 Q. I know, but they ordered 30 and later cancelled five, isn't that what happened?

- A. Yes, sir, all right. They had that option to begin with.
  - Q. At what time, in fact—
- A. For the record, I'd like to say that cancellation was concurrent with the replacement of an order for twenty-five 720 airplanes.

In other words, it was not a reduction in fleet.

- Q. When did that take place, by the way?
- A. I'm sorry, I can't remember.
- Q. Was it before 1958?
- A. It was before 1959.
- Q. Is it your best recollection that it was some time in 1958?
  - A. That's the best recollection I have. Pardon Me?

### Connelly-Cross

- Q. Is it your best recollection now that it was some time in 1958?
  - A. I'd rather say it was before 1959.
  - Q. You are not including 1955?
  - A. No.
  - Q. Or 1956?

ITr. 30901 A. No.

- Q. Are you including 1957?
- A. It could be.
- Q. It could be?
- A. Could have been.
- Q. If 1957 it would have been the latter part of 1957, would it not?
  - A. I'm not certain.
- Q. Don't you remember when the 720 became available to airlines?
- A. I probably should, but we have a few more things to remember. I'm sorry, I don't know.
- Q. At what time, in fact, did early delivery positions on the 120s cease to be available to TWA?
- A. By early deliveries, you mean what, sir? We still think they had early deliveries.
- Q. Maybe we ought to define what you mean by early deliveries. What do you mean by early deliveries?
  - A. We mean earliest-
- Q. Early deliveries as set forth, for example, in Mr. Rummel's statement?
- A. Well, I will have to refer to the actual situation. We think they had very early delivery positions in consideration of the time they ordered the [Tr. 3091] airplane.

What I am trying to say it is a relative thing.

- Q. But I am trying to find out, Mr. Connelly, is that you have described Mr. Rummel's reallocation as reasonable?
  - A. Under certain assumptions.

- Q. I understand. I am not trying to take those words out of your statement, Mr. Connelly.
  - A. No, I understand.
- Q. I am trying to keep the questions a little shorter than they otherwise might be.
  - A. I see.
- Q. And under these reallocations so far as the 120s are concerned, TWA receives the sixth plane, the eighth plane, the eleventh plane, the thirteenth plane and so on, and at no time are they more than one plane behind American or more than two planes behind Pan American.

Considering those delivery dates as the early delivery positions, at what time, in fact, did such delivery positions cease to be available to TWA?

A. Well, it was the time of negotiation with American, Pan American, United which negotiations were in the latter part of 1955.

[Tr. 3092] Q. Can you fix the time more clearly than that?

- A. I'd say about October of 1955.
- Q. By the way, prior to taking the stand today, did you review any of the Boeing documents that were produced pursuant to the subpoena?
  - A. No, sir.
- Q. Were you told of the contents of any of those documents by anybody?
  - A. No, sir.
- Q. Prior to preparing your statement, your prepared statement, did you review any of the Boeing documents!
  - A. No, sir.
  - Q. Did you have anybody-
  - A. Other than the actual delivery dates.
- Q. Did you have anybody review the Boeing documents for you?
  - A. No, sir.

Q. If you turn to pages 10 et seq of the last two pages of the attachment to your deposition, you will find Mr. Rummel's reallocation of the 320 series, and you will note that the first three planes are to go to TWA before Pan American gets any, and that TWA has a time advantage over Pan American—

[Tr. 3093] A. Sir, may I interrupt? Is this on page 13?

- Q. Wait. It is the number of planes I was looking at. It is the last two pages. Reallocation program production available for month, do you see it?
  - A. Yes, 12 and 13.
- Q. My pages are not numbered for some reason. I don't know why.
- A. You are right, it is the last two pages.
- Q. At any rate, we are talking about the same schedule of reallocation, and according to this reallocation TWA would receive the first of the 320 series, and would continue to have an advantage over Pan American until the 11th plane was delivered to each of them.

At what time, in fact, did the delivery positions set forth in the allocation to which I have directed your attention cease to be available to TWA?

- A. The latter—the very end of 1955, the very beginning again of 1956. I would say within, you might say, a 30-day period.
- Q. You are talking of December of 1955 and January of 1956?
  - A. That's right, essentially December of 1955.
- Q. The Boeing production of both the 120 series and the 320 series was accelerated, was it not, so that [Tr. 3094] deliveries became available prior to the contract dates?
  - A. In general, that is correct.
- Q. When it was accelerated, did each airline benefit from the acceleration in the same degree?

- A. To the extent our production line would permit us to do so, yes.
  - Q. What do you mean by that?
- A. Well, if we had in our line for production certain airplanes allocated to customer A, and these were moving down the production line, they would have to go through the factory in that sequence. We can't juggle positions in the factory.
- Q. In fact, regardless of what your production problems may have been, did each of the airlines benefit to the same degree as a result of the acceleration of production?
  - A. I believe in the overall this was the result.
  - Q. That is your present recollection?
- A. Yes, and to a reasonable extent there were variations here and there, but the overall effect was generally an improvement to everyone.
- Q. That is true, but did they all improve to the same degree is what I am trying to find out?
  - A. Probably not.

[Tr. 3095] Q. Probably not?

- A. Because of production requirements.
- Q. If, in fact, the acceleration benefited some airlines rather than others, is it proper to use actual delivery dates rather than contract delivery dates in any reallocation?

Mr. Sonnet: I think that is an argumentative question: I don't know what the word "proper" means.

The Special Master: Overruled.

A. I hate to ask you to do this, Mr. Hayes, but would you repeat it again?

## Connelly-Cross

Q. I will be happy to do so, Mr. Connelly.

The Special Master: Don't hesitate to do that at any time if it clarifies things for you.

Read the question.

(The question was read.)

- A. I believe so, because I don't believe the degree of variance was substantial enough to have an appreciable effect on it.
- Q. But to look at what would have happened if contracts had been made in late 1955 or early 1956, would it be more reasonable to use contract dates in a realloca-[Tr. 3096] tion rather than actual delivery dates?

Mr. Sonnett: The same objection. I don't know what the standard is that counsel is using here.

The Special Master: Overruled.

The Witness: Again I will have to ask—would you repeat the question?

The Special Master: Would you read that question back, please?

(The question was read.)

- A. I thought that was the question I had just answered.
- Q. No, it is a different question.

The Witness: You will have to read it again, please.

The Special Master: Do you want to rephrase the question?

Q. I will put it this way:

As I understand your statement, it is an acceptance as reasonable of a projection by Mr. Rummel as to what delivery dates would be assuming the three air carriers ordered at about the same time, am I correct in that?

A. Yes, sir.

ITr. 3097 Q. Since it has to do with the ordering at about the same time, I ask you would it be more reasonable to use the contract delivery dates than the actual delivery dates?

[Tr. 3098] • • • A. My own opinion would be that at the time of order—we are assuming that they were placed at the same time, but in my opinion it would be more accurate to use actual dates because we have something that we at least have a handle on. And I don't believe again the degree of variance would be such as to substantially create any large difference.

Q. If you had contracts you would have a handle, too, wouldn't you?

A. Yes, sir, that is correct, but as long as we are delivering ahead of contracts we are meeting our contract requirements.

Q. You deem it at least equally reasonable to use actual delivery dates rather than contract delivery dates?

A. That is my opinion because I don't think the degree of difference is substantial.

Q. Referring to this statement attached to your prepared statement, the one prepared by Mr. Rummel, as far as the actual delivery dates set forth therein are [Tr. 3099] concerned, is it your understanding that they were all for certificated, fully certificated planes or that some of them were for not fully certificated planes?

A. Certificated planes.

Q. Did you have that checked?

A. Yes, sir.

Q. Is it your testimony that the dates set forth as actual deliveries were deliveries of fully certificated planes?

A. On the basis of the checks that were made by my people, yes, to the best of my knowledge and belief.

- Q. It has been brought out so far in this proceeding-
- A. May I amend that to one extent?
- Q. Yes, sir.

A. Some of the uncertificated planes which were delivered were certified by the operators upon the furnishing of certificates by the Boeing Company.

So technically I guess the answer to your question could have been no, some of them were uncertificated. We considered them certificated because the provision in the contract under which they would come back to us for the installation of these items and then delivered as certificated airplanes was never carried out.

Tr. 31001 In other words, the operators were using the airplanes, they incorporated the things that had to go in for final certification on their own to keep the airplanes in service.

- Q. Let me direct your attention to page 4 of the statement of improvement having to do with the deliveries of the 120 series, the three columns, TWA, Pan American and American.
  - A. Right, I have it.
- [Tr. 3101] Q. Is it your testimony on your recollection that the plane delivered to Pan American on August 15, 1958, was a fully certificated plane available for use for the carriage of passengers?
- A. No, that, I am quite confident was an uncertificated airplane used for route proving and training and certificated by the carrier on our furnishing the necessary kits.
- Q. I can advise you that the record in this case shows as of now the full certification didn't take place until November of 1958.
  - A. I believe that's probably right.

- Q. Is it also true that the plane shown to be delivered to American on October 23rd was not a fully certificated plane available for the carriage of passengers?
  - A. It was not.
- Q. The same is true of the plane shown to be delivered to TWA on January 29, 1959?
  - A. That I am not sure of.
- Q. I can advise you that the record in this case shows it was NP or an X?
  - A. It was?
  - Q. Yes.
  - A. All right.

[Tr. 3102] Q. Later certified, I think the final certification took place in July.

When we come to the reconstructed schedules which appear at pages 6, 7 and 8 of Mr. Rummel's statement, would one need to carry over the non-certificated planes to the dates set forth in the reallocation?

- A. Well, here the same circumstances held, and I—I cannot recall whether some of these were uncertificated or not.
- Q. Was not the first plane delivered to each of those carriers an uncertificated plane in the sense that it could not be used for the carriage of passengers?
  - A. These still refer to the 120 series.
  - Q. That is right.
- A. Well, we—this is true, they were uncertificated airplanes.
- Q. I believe all of the 320 were certificated fully at the time of delivery, is that correct?
- A. Either that or the circumstance I described held, and they were certificated very shortly after we obtained our type certificate.

- Q. Are you acquainted with the subpoena that was served on Boeing on June 6, 1966, for certain documents?
  - A. For certain documents?
  - [Tr. 3103] Q. That is right.
  - A. I knew we had been served, yes.
  - Q. Did you ever see the subpoena?
  - A. No, sir.
- Q. Did you have anything to do with complying with that subpoena?
- A. No. The effect of it was you might say automatic. We were served and we began to furnish the material.
- Q. In connection with compliance, were your personal files in your own office searched, do you know?
  - A. I don't know.
- Q. Did you have nothing to do with whatever search was made?
  - A. I had nothing to do with it.
- Q. Do you have personal files going back to 1955 and 1956 in your office?
  - A. Yes.
  - Q. You do?
  - A. Yes.
- Q. But you just don't know whether they were searched or not in connection with the subpoena?
- A. I don't know personally, no. I presume if the subpoena covered matters of that nature they probably were.
- [Tr. 3104] Q. Prior to Boeing seeking to sell its jets, how long was it since Boeing had actually been engaged in the sale and delivery of aircraft to commercial airlines?
- A. Our last previous program was the Stratocruiser program and I believe we delivered the last of those airplanes in 1950.

- Q. What was the first jet aircraft that Boeing offered to airlines? Was it the 120 or the 320?
  - A. The 120 series.
  - Q. 120†
  - A. Yes.
  - Q. When was that?
- A. We started to talk to the airlines about the—it wasn't then the 120 series. We had a prototype airplane which for purposes of reference I will say was designated the 367-80.

And we discussed the merits of that airplane from the standpoint of its performance and what could be done with that airplane in respect to a design of a commercial jet transport.

- Q. When was that, Mr. Connelly?
- A. I'd say those discussions were in 1954.
- Q. Was that prototype the same plane as the 120?
- A. No.

[Tr. 3105] Q. Tell us the differences, please.

A. Well, the differences were mainly in the fuselage size, the airplane—the diameter of the fuselage was increased, and the length of the airplane was increased approximately ten feet.

In general the aerodynamic characteristics of the airplane remained fixed.

- Q. How about the engines?
- A. It was the same engine. On the 120 airplane.
- Q. Yes, that is what I am talking about.
- A. Yes, the 120, the same engine.
- Q. Was the plane that was being offered in 1954 the prototype or were you even then considering changing it so it would become what eventually did become the 120?
- A. I didn't mean to say we were offering that airplane in 1954. We were discussing it with the airlines and it

# Connelly-Cross

wasn't until we had had the airline inputs as to what they thought would best meet their requirements that the 120 airplane was eventually designed.

Q. That was some time in 1955, was it not?

A. That is correct.

Q. When was the 120 developed and offered to the airlines, that is, with detailed specifications?

A. As nearly as I can recollect, it was—our first [Tr. 3106] overtures were made some time in about the middle of 1955.

Q. Had detailed specifications been prepared by that time?

A. As far as a basic specification was concerned, I would say it was well along, not completed.

Q. When were the detailed specifications completed, Mr. Connelly, as far as the basic airplane was concerned?

A. It would be, oh, roughly the third quarter of 1955.

Q. Is it correct to describe the 120 by contrast with the 320 series as a domestic airplane and the 320 as a transcontinental airplane?

A. At that particular time, this was true, although they —obviously the airplane could be used for over water routes, but taking the North Atlantic it was a marginal airplane.

Q. You have testified that the 320 series became available, I think you said, December of 1955 or January of 1956, if I recall correctly.

A. In that period, yes.

Q. That is right.

Prior to that time, did Boeing offer any truly international plane to the airlines?

A. Referring to the 707 series, no.

[Tr. 3107] Q. Is there another series that they did of-

- A. Well, of course, to answer your question—maybe I am being too technical—you go back to the Stratocruisers, and we had turbo—
  - Q. No, I am talking about jets.
  - A. That's why I mentioned the 707 series.

Mr. Sonnett: Also since we are defining terms, I suppose truly international means intercontinental without stops?

Mr. Hayes: Yes. I assume that Mr. Connelly-

The Witness: Major over water routes.

Mr. Hayes: That is right.

- Q. Was the 320 the first such jet that was offered to the airlines by Boeing?
  - A. By Boeing, that is correct.
- Q. Will you tell us just what were the policies that Boeing established in 1955 insofar as offering jets to the airlines were?

A. There is nothing in the way of any written policies that I am aware of that—number one, the first requirement, of course, was our own basic program.

Naturally, we are in business, and our first consideration must go—if we are going forward with a program we must establish a firm base for it. So that is [Tr. 3108] our first consideration.

In respect to our customers, we attempt to treat every one as fairly and equally as we possibly can, and we have to give what priorities we are able to do that our production line will permit us to do to those who step up first, seriously undertake negotiations with the idea of concluding them with a purchase, and order—I wouldn't put too much emphasis on the size of the first order, although that is a con-

sideration, but the overall potential of that airline, looking through the years.

Q. Any other policy?

A. Those are the basic policies, if we call them policies. They are practices that we have adhered to as closely as we possibly could.

Q. The first you mentioned is Boeing's basic program. By that, did you mean that Boeing's desire was to get back into the active manufacture of aircraft for airlines?

A. I didn't mean that directly but that certainly was an objective.

No, my point was we must give first consideration to our program. By that I mean we can't give first consideration to any customer. We have had customers say [Tr. 3109] "I will take the first 50 airplanes." We can't run a program giving any body the first 50 airplanes because we would never sell another one, if there is any competition in the field

We must establish a progrm that permits us to introduce a number of customers of sufficient size and scope to give us a reasonable chance to have a profitable program.

Q. How important a consideration was it in Boeing's mind that Boeing get back into the supply of aircraft to

commercial airlines!

A. Mr. Hayes, I think what has happened over the last ten years is the best answer I can give to you on that. I mean, our backlog today I would say is probably at least three-fourths commercial business.

Q. So I do not misunderstand vou-

A. It was very important.

Q. Your answer is that it was very important?

A. It was very important, yes, sir.

Q. You said that there was no written record of these policies that you stated.

How did they come to be established? Were there meetings of the directors, or did the headquarters group decide on them? How did they come to be established?

(Tr. 31101 A. It was a management determination of basic principle of fair play as I mentioned before with first considerations being given to how can we develop a satisfactory and profitable program.

Q. You say it was a management decision. Whom do you include?

A. Well, I don't mean—it is not a decision. Let me say it is a culmination of what I think is just good sense, good business sense.

Q. That may be. I am trying to find out who the parties were who participated?

A. You can take all the people whom I named originally in headquarters.

Q. The headquarters group?

A. Yes.

Q. Did Boeing make any announcement of these policies to the trade, that is, to the airlines?

A. I don't think we made any public announcement of them. I think we probably have had occasion to mention these policies or practices at certain times in our relationships with probably all of our customers or the majority of them.

Q. Were these policies that you referred to or had these policies to which you referred been adopted by [Tr. 3111] Boeing in 1954 when Boeing was first showing the prototype?

A. Well, these—the term policy, if we use that word, has been a byword with Boeing for a long term. It wasn't peculiar to the jet program by any means.

Q. The reason I use it is that you use it, Mr. Connelly, in your statement.

A. Yes, that is correct, for the lack of a better word.

Q. I want to know what you meant.

A. Yes, sir, I understand.

Q. The question is were they the policies that existed at least in Boeing's mind when in 1954 they were first showing the prototype to airlines?

A. Well, our activity in 1954 was more directed toward the type of airplane that could be developed to satisfy the commercial airlines transport requirements as we saw them for the next ten or twenty years.

We weren't at that time talking about delivery positions,

this, that or the other thing. This came later.

Q. Whatever the policies were established, did they continue throughout the whole period up to 1961, continue unchanged, I mean?

A. They continued to today.

(Tr. 3112) Q. You mentioned delivery positions.

Did Boeing establish, within its own organization, any policies with respect to how it would allocate delivery positions?

A. Yes, in the format of what our production rate would be, what our accumulated inventory of airplanes at point of certification would be, the number of customers we thought was necessary to assure a sound program, and we made some tentative projections as to what these delivery schedules should be, without any knowledge of how many, if any, of these customers we might be able to obtain.

Now, by that I mean we were starting out recognizing we have X number of airlines that could have an interest in an airplane, and we tried to initially project delivery schedules we think will be reasonably acceptable to the airlines, provide a reasonably competitive situation as far as they are concerned, and from there on this changes as time goes on, and we secure certain customers or competition gets others, and there are constant revisions of this.

It is—I think it is quite typical of any type of business such as ours with high risk programs and—I am trying to accent the importance of our having con- [Tr. 3113] trol completely of how we must allocate positions, being fair and equal across the board as best we can, but with the end result that we will have a successful program.

We cannot let customers dictate what our production schedule is going to be or what our delivery schedule is going to be.

Again I recite many times we have been approached by one customer, "I will take the first 50 airplanes." This is the surest way to go broke if you want to put it that way. In the meantime you have lost all the other customers.

- Q. I understand you to say in the course of your answer that Boeing at one point or other arrived at tentative decisions or what have you with respect to delivery positions?
  - A. That's right.
  - Q. When was that, Mr. Connelly?
- A. Oh, from a time standpoint, it would be the latter part of 1954 or the early part of 1955.
- Q. What was the tentative decision that Boeing then came to?
- A. Well, in the first place, there was no naming of customers. This was Customer A, B, C, D and E and how ITr. 31141 this would fit in with an overall production rate and accumulated inventory.
- Q. Do you recall any of the specifics of this tentative proposal?
- A. I can't, because as I said, Mr. Hayes, this changes day by day, as the events go on.
- Q. Do you recall whether Customer A, and I mean by A, the first one who ordered and B, the second one who ordered, and C the third, that Customer A would get a

certain number of delivery positions before Customer B would get any and so on? It was that kind of tentative decision that was made?

A. Yes, primarily, because we have two major factors we must contend with.

Everyone can't be first. You have to select someone. We have the certification program to go through with. That customer's airplanes are normally the ones we have to use for a certification program.

There is another point. I'm sorry at the moment it escapes me.

- Q. Do you recall how many delivery positions under this tentative delivery program that you decided upon were to go to the first customer before the second customer got any, to the second customer before the third customer [Tr. 3115] got any and so on?
  - A. May I back up and answer-
  - Q. Sure.

A. The other point has to do with customer introduction. Each airline has a completely different specification than the other. We built no two customers' airplanes alike. It is pretty much a custom operation.

We cannot introduce customers as the customer might like us to because our capability to design and develop the differences between these airplanes and certificate these differences dictates a certain lag between one customer and another.

I am sorry to go-

4. That is perfectly all right.

I am glad you did.

A I forgot your second—next question.

Q. The second question had to do with this tentative delivery schedule that Boeing arrived at.

Do you recall how many airplanes under this tentative schedule were to go to Customer A before Customer B received its first, how many to Customer B before Customer C received its first, et cetera?

A. Only to this extent: We had to determine how [Tr. 3116] many airplanes we would need for the certification program. This obviously has to give No. 1 customer some lead, because we have to use his airplane to certificate the entire series and obtain our type certificate.

From that point on, it is a question of how fast we can introduce them from the standpoint of our own ability, as we can best estimate our capability to design and develop these differences in configurations.

al

st

liv

88

It

suc

one

it b

obv

C

0

polic

airli

Q. I understand that. My question was directed to this tentative delivery schedule that you worked out.

A. How many did we have for the 120, is that your point?

Q. No, no. How many did you have for Customer A before Customer B got one, how many for Customer B before Customer C got one? I am assuming that when youse up this tentative delivery, you had such items of certification in mind.

A. Yes. I would say we probably had in the order of three airplanes.

Q. How many airplanes are necessary to go to the first customer to meet your certification program?

A. Well, this must be related to your desire to be in a position to make as early deliveries as possible. And what I am trying to say is, you say how many are neces. IT. 3117 sary. Maybe one would be necessary, if you don't care.

But if you can accelerate the program, then we obviously put more airplanes in to accomplish the end result of having our program proceed earlier than it otherwise would be

# Connelly-Cross

- Q. But can you answer the question as to how many of the first deliveries must go to Customer A so that you can accomplish certification?
  - A. It could be one, it could be three, it could be five.
  - Q. There is no one number?
  - A. There is no one number. It depends on the program.
- Q. Your tentative schedule did assume that with the delivery of three to Customer A, you would be able to accomplish certification?
- A. Whether the first projected schedule had three or not, I don't know. We ended up with three.

As I say, this changes constantly, Mr. Hayes, as you go along.

Q. I think you said—I am not sure—correct me if my statement is incorrect, Mr. Connelly—that the tentative delivery schedule was not adhered to, in fact? You did not say that?

ITr. 31181 A. No, it was not.

- Q. You shook your head no?
- A. I'm sorry. You might say that is only an estimate. It has to be to begin with. And as events occur, if we are successful in signing up X number of customers, we get one result.

If our competition is signing them up faster than we are, it brings about another result. So it can't be a fixed thing, obviously.

Tr. 3119] • • • Examination (cont'd) by Mr. Hayes:

Q. Mr. Connelly, you mentioned in connection with the olicies of Boeing that—speaking generally, this was—as I call it—you considered not merely initial orders that ight be placed by airlines, but also the potential which an olice represented.

- Q. Did you say that Convair sold a block of 990s to Hughes Tool before any other purchaser came in?
  - A. I am quite confident that's the case, yes.
- Q. See if I can jog your recollection a bit. Wasn't the first airline to order 990s American?
- A. No—oh, I beg your pardon. I am speaking of the 880, not the 990. You are quite right, it was the 880, not the 990.
- Q. As to 880s, weren't there contemporaneous orders placed by the Hughes Tool Company for TWA and by Delta?
- A. I think some of the Delta positions could have come out of the original allocation.
  - Q. I did not hear what you said.
- A. I think some of the Delta Airplanes could have [Tr. 3123] come out of the original allocation to the Hughes Tool Company. I am not sure of that, but not being a party or privy to those discussions or negotiations, this is pretty much hearsay. I don't know.
  - Q. You don't know of your own knowledge?
  - A. I do not know of my own knowledge, no.
- Q. During the piston era, did Boeing, Douglas, Lockheed, Convair and, say, Martin follow the same sales policies do you know? You made an exception with respect to Lockheed as to the Constellation.
- A. I am not familiar with what the practices were at that time.
- Q. Do I understand, then, that you are not prepared to testify, Mr. Connelly, that Boeing's sales policies were necessarily the sales policies of the aircraft manufacturing industry generally?
- A. I can't say that they were the same, of my own knowledge. There were differences in respect to certain programs.

- Q. Were Boeing's policies, to which you refer, always reflected in the contracts it made with airlines? In short, were the contracts in accordance with its policies at all times?
- A. We think the contracts that were entered into ITr. 31241 were in accordance with those policies. There—
  - Q. Aside—I am sorry.
- A. I was going to say there was no express policy statement, as such, in a contract.
- Q. Did Boeing ever enter into informal agreements with any airlines which were not spelled forth in the formal contracts? By "formal contracts," I include all papers, side letters and everything else.
  - A. You mean to a conclusion?
  - Q. Pardon?
- A. Let me—well, we have never in any instance not ended up with a definitive contract.
  - Q. I know that.
  - A. Formal definitive contract.
- Q. That's right. Did Boeing ever make additional agreements, oral in character, relating to any of the provisions of the contract which were no part of the written agreement?
  - A. Or the final agreement?
  - Q. Yes.
  - A. Not to my knowledge.
  - Q. Never did?
  - A. Not to my knowledge. You mean a side agreement—
  - Q. That's right.
- Tr. 3125] A. (continuing)—or an oral agreement on the side?
  - Q. That is right.
  - A. Not to my knowledge.

- Q. Did Boeing, as a matter of policy, disclose to one airline its contract terms with another airline or refrain from doing so?
  - A. We refrained from doing so.
  - Q. Was that policy generally followed?
  - A. Yes.
- Q. With respect to delivery positions—and I am addressing myself to the jets entirely now, Mr. Connelly—when Boeing got to the point of reserving delivery positions for any one airline, or more—and I am thinking of the first airline and then the second and the third—did they reserve additional delivery positions for later possible customers?
  - A. Yes.
- Q. What was the policy in that regard, so far as the 121s were concerned?
- A. Well, that was the policy. I don't know how one could be specific on that, Mr. Hayes. This is a matter, as I mentioned before, of continual evaluation as we went along.
- Q. So you say. But Boeing entered into contracts ITr. 31261 for the 121s, if I recall your testimony, first with Pan American and American.
  - A. Correct.
- Q. After those contracts had been entered into, can you tell us what delivery positions were available for later comers, other airlines?
- A. All I can say in answer to that is we had reserved positions for others, including TWA, but I can't recall what they were specifically.
- Q. You do not know whether it was among the first three planes or the first five planes or the first ten planes!
  - A. Planes or customers?
  - Q. Pardon!
  - A. Planes or customers.

- Q. Planes. Plane deliveries. I am talking about delivery positions that were reserved.
- A. Well, we had projected what our capability was from the standpoint of our production rate and our ability to introduce new customers, and we attempted to, from time to time, determine the more likely airlines to eventually be interested in taking those positions. And this was constantly changed.
- Q. As of the time that the American and Pan American [Tr. 3127] contracts had been made, was there any written record of what delivery positions were then available or other airlines who might come along?
- A. Our overall sales schedules, yes, which was not specific as to individual airlines.
  - Q. Does that still exist?
  - A. Well, not in the case of the 120, no.
  - Q. Does it in the case of the 320s?
  - A. No. We are far beyond that point now.
- Q. I understand that. You have no recollection now as to what delivery positions, so far as the 120s are concerned, were still available for any particular airline after Pan American and American had made their contracts?
  - A. The specific position we quoted to TWA, yes.
  - Q. How about United?
  - A. United had purchased DC-8s.
  - Q. Before Pan American and American contracted?
  - A. Not before Pan American had contracted, no.
  - Q. Before American had entered into a letter of intent?
  - A. Yes, I believe that had occurred prior to that date.
- Q. How about planes for foreign carriers, can you ITr. 31281 tell us what delivery positions were reserved for them?

- A. Well, we reserved positions for BOAC, Air France, Lufthansa, Sabena, KLM and SAS, all major overseas carriers.
  - Q. Can you identify the positions that were reserved!
  - A. No, I cannot.
- Q. So that neither with respect to the 120 series nor the 320 series can you presently state from your recollection what positions were reserved for airlines other than Pan American or American?
  - A. No, because these were constantly changed.
- Q. I am speaking of the time immediately after Pan American and American had contracted. As of that moment, can you testify what delivery positions were available to the others?
- A. No, I can't, because it is not a fixed thing. I mean, it is a day to day change.
- Q. With respect to the order, what did you consider an order? Was it a final order, was it a letter of intent? What was it?
- A. We considered, and still do, that when an airline has expressed a serious interest and has entered into negotiations in good faith and we have quoted him positions, [Tr. 3129] we retain those positions as long as those conditions continue.
- Q. Of what importance is a letter of intent, if there is still no formal contract?
- A. Well, this depends on the character of the letter of intent, and in a majority of instances a letter of intent contains certain qualifications.

It may be a matter of board approval or financing or government approval or any set of circumstances that must be fulfilled before the agreement is binding.

Time limits are set on these things and so long as those letters of intent have not expired, we will retain the delivery position.

- Q. Even though another airline might come along and be willing to enter into a final contract?
  - A. Yes.

Q. Do you disclose to other airlines what delivery positions you have agreed to give to other airlines?

A. We have in certain instances stated outstanding proposals that were made on a firm basis, as far as holding delivery positions for a certain period of time, yes.

Q. Did that happen in connection with the 120s?

A. I can't recall an instance where this was involved with a 120.

Tr. 31301 Q. How about the 320s?

A. Yes, it happened in the case of TWA.

Q. What happened there, would you tell us?

A. I mean the Hughes Tool Company. Pardon me.

Well, Mr. Hughes asked what open positions we had on the 320 airplane through, I think it was, June of 1960, and we told him what we had open, excluding the firm outstanding proposals we had at that time.

Q. You say "we." Who told him, do you know?

I guess I did. Or maybe Bill Allen did. I am not A. Sure.

Q. Did you tell him how many delivery positions Boeing had agreed to give to Pan American?

A. To my knowledge, we have never revealed that, no.

You did not reveal that?

A. Not positions. Of course, the press release gave the total quantity. And as is usually the case, a public announcement would state the first deliveries. It might even go so far as to say in what period of time they might be delivered.

Q. Do you recall what happened with respect to the Pan American order for 320s in that regard?

A. No, I can't specifically.

ITr. 31311 Q. Has there ever been an instance where Boeing has negotiated with two different airlines at the same time, arranging for one to get delivery positions of the other under certain sets of circumstances?

The Witness: Will you repeat that again, please! Mr. Hayes: Would you mind reading it! (The question was read.)

A. Our customary procedures in cases like that would be to quote both, if they were the same position, subject to prior sale.

- Q. What does that mean, if they were the same-
- A. It means whoever steps up first would get them.
- Q. You mean you would offer the same delivery positions to two different airlines?
  - A. This has happened in a very few instances.
- Q. Has there ever been a situation where you have offered earlier airline positions to Airline A than to Airline B and further agreed that under certain circumstances Airline A could transfer its delivery positions to Airline B!

A. To my knowledge, this has only occurred in the case of an affiliate.

Q. An affiliate of whom?

[Tr. 3132] A. An affiliate of TWA or Pan American, whoever the affiliate might be.

Q. I am thinking of two airlines that are not affiliated. Has it ever happened?

A. Well, I am talking of two airlines primarily that are not affiliated, but Pan American has affiliates.

Q. You mean you have done this only in connection with Pan American or an affiliate of Pan American?

A. No. In certain cases where an airline has an affiliate, we have agreed that in certain cases they could under cer-

tain conditions transfer some of the airplanes they bought from us to that affiliated airline. BOAC and Cunard Eagle —or Cunard is a good example of that.

Q. Aside from affiliated airlines, have you ever entered into any such arrangement with two independent airlines?

A. As I recall, we gave Pan American the right to transfer a limited number of airplanes to foreign airlines, which might be required in order to obtain landing rights in those areas.

- Q. Aside from that, do you recall any instance?
- A. No, I do not.
- Q. At the time that Boeing was negotiating with Pan [Tr. 3133] American, did Boeing know that Pan American was also negotiating with Douglas?
  - A. Yes.
- Q. Did Boeing know that Pan American intended to buy Douglas aircraft?
  - A. It didn't know it, but we strongly suspected it.
  - Q. When did you get to the point of knowing it?
  - A. When the announcement was made.
- Q. Do you recall when that was with relation to Pan American's formal contract with Boeing?
  - A. No, I do not.
  - Q. Whether it was before or after?
- A. I am sure the announcement was after the formal contract. As I recall, both their purchase of Boeing and Douglas airplanes was announced at the same time.
- Q. After delivery positions has been granted in one contract with a particular airline, would it be possible for that airline to improve its position by later orders, or was there any policy on that at all?
- A. In a very few instances, it became possible to improve an airline's overall schedule by reason of certain open

positions that did develop from time to time and became available.

- Q. How were they developed or did they become avail. [Tr. 3134] able, Mr. Connelly?
- A. Well, we may have outstanding quotations to other customers that eventually were not consummated.
  - Q. Any other way it could become available?
- A. Well, one possible way would be by some reason we were able to squeeze out one more airplane or something like that. I can recall no instances of this.

ITr. 31351 Q. You mean improvement in manufacturing?

- A. In manufacturing.
- Q. In the case of the Toolco agreement, did it make any difference from Boeing's standpoint whether Toolco or TWA placed the order?
  - A. None whatsoever.
- Q. When you mention TWA in your statement, do you include in that orders by Toolco for the benefit of TWA!
  - A. Well, normally I would, yes.
  - Q. I mean in the statement that you prepared.
  - A. Yes.
- Q. You refer to TWA from time to time. In that, do you mean as well as Toolco for the benefit of TWA
  - A. Toolco, for the benefit of TWA, that's right.
- Q. On your prepared statement, Mr. Connelly, page 2, the paragraph bearing the No. 1, the second sentence reads:

"In accordance with its policies, Boeing would have afforded TWA substantially as early delivery positions as those afforded to other customers of comparable interest to Boeing,"

And then you proceed with various subdivisions.

# Connelly-Cross

Can you identify who were the customers of comparable interest to Boeing?

ITr. 31361 A. I'm sorry. I lost the paragraph.

Q. Page 2.

The Special Master: Right here, the second sentence.

- Q. The second sentence of No. 1, would you read that please, down to the word "Boeing"?
  - A. Yes.
- Q. My question is, would you please identify who were the customers of comparable interest to Boeing?
- A. Well, the other major trunks and the other major international carriers.
  - Q. As a group?
  - A. As a group.
- Q. Did Boeing have any particular desire to sell some airlines more than others?
- A. No, sir. We were interested in selling the greatest number of airplanes we possibly could.
  - Q. Did Boeing have a priority list among airlines?
  - A. No, sir.
- Q. In that sentence you also use the phrase "In accordance with its policies, Boeing would have afforded..."

  Do you see the language, the beginning of that same sentence? A. Yes.

ITr. 31377 Q. Does the language "would have afforded" mean the same as offered?

- A. Yes, sir.
- Q. It does mean the same?

What is meant by the phrase "substantially as early delivery positions"?

- A. Well, that refers to our capability to equalize a situation in a manner consistent with our own production requirements.
- Q. Can you translate that into numbers of planes or sequence?
- Q. I'm afraid I can't, Mr. Hayes, because the factors involving this are so many and so varied.
- Q. You do not mean delivery at the same time or in the same month or any particular period of time?
  - A. Or in any sequence.
- Q. There could be or could there be fairly substantial time gaps between deliveries to different airlines in which you would still have considered substantial equality in delivery positions?
- A. I don't think we can call it substantial equality. It would be a matter of whether or not we were able to produce the specific airplane that one company might desire at or about the same time as that or those being ITr. 3130 prepared for other people.
- Q. What do you mean by at or about the same time! That is what I am trying to find out, Mr. Connelly.
- A. Our schedules are essentially on a monthly basis. We do not specify days or weeks.

We contract to deliver X number of airplanes to a customer within a certain month.

At the start of a program, we would say during or before a certain month, not knowing precisely what our production capabilities will be, looking two or three years ahead. It is possible we might be able to deliver them earlier.

Q. Would you consider as substantially early delivery positions a situation where two carriers ordered, Carrier A and Carrier B—say Carrier B a week after Carrier A—but Carrier A would have X number of airplanes, three,

# Connelly-Cross

four, five, before Carrier B received any, and there might be a period of two or three months during which Carrier A would receive its first airplanes? Would that be considered by you?

A. If I understand your question correctly, it does go back to a problem we have that everybody can't be first and we must have a certain number of airplanes to accomplish our certification program.

(Tr. 3139) So, it has to be, the first man has to have a certain number of airplanes ahead of whoever comes behind. From then on, it is a question of our ability to introduce new customers, because of the variance in design and development aspects of each individual customer's requirements.

- Q. That is the best you can tell me in response to my question?
  - A. It is the best.
- Q. In the actual situation that took place among TWA, American and Pan American with respect to the 120, is it your opinion that TWA, Pan American and American were accorded substantially early delivery position?
  - A. Substantially early?
- Q. That is right. I am using your phrase, Boeing would have afforded substantial equality in early delivery positions.
  - A. That is why I asked the question.
  - Q. Yest
- A. As to substantial equality, by reason of the sequence in which these things happen, I don't think substantial equality holds.
  - Q. Would you explain that, please?
- A. Yes, because our policy to give what priorities [Tr. 3140] there might be to the customer who first steps up and orders a substantial number of airplanes.

- Q. As against Customer No. 21
- A. Or Customer No. 3.
- Q. As to Customer No. 2, suppose he orders the next day. Your commitment is already made to Customer No. 1, is it not?
- A. Well, by orders, I'd like to go back again and say that it isn't a matter of who signs a piece of paper. It is a matter of who expresses sincere interest and enters into negotiations in good faith. This could take months, not one day.
- Q. There comes a point, does there not, Mr. Connelly, when Boeing and an airline have some sort of agreement that some number of planes will be purchased, whether it is a signed agreement—
  - A. Yes.
  - Q. -or not?
  - A. Yes, that's right.
- Q. So far as Boeing is concerned, when that time arrives with Airline A, whatever commitments were made will be held fast—
  - A. That is correct.
- Q. —assuming that eventually the contract is [Tr. 3141] signed?
  - A. That is correct.
- Q. Let us assume that Airline A comes to such an understanding with Boeing on a particular date, and a week later Airline B comes to a similar understanding with Boeing. Will the commitment to Airline A remain, assuming that eventually both have signed contracts?

A. I don't think I am making myself clear.

If both airlines started negotiating at the same time in good faith, the schedules we would be quoting would represent substantial equality, even though the agreement we'll

sign as soon as the papers are ready may occur one day apart or a week apart.

Q. What then do you mean by substantial equality?

A. The—working toward the end result that both carriers would—even though one might have a few airplanes ahead of the other, that over a period of time we would attempt to equalize this situation so that the differential never exceeded that which it started with.

Q. How many airplanes do you mean when you say might have a few ahead of the other?

A. I don't know one can fix a number on that. It could be anything from one to five.

Q. Did Boeing, so far as you know, ever make offers [Tr. 3142] to two different airlines at or about the same time in which it offered one airline substantial priority over the other as to delivery positions, and for comparable numbers of planes?

A. We would have to on the basis of our ability to introduce new customers.

Q. You would have to offer one of them?

A. One obviously would have to have, say one month or something ahead so that we could concentrate on these designs and developments in sequence. We can't do them all all at once.

Q. Have you ever done it in numbers of airplanes offered, negotiating with two different airlines at the same time, offered one of the airlines a specific number of planes for delivery before the other airline would get any?

A. Yes. It gets to be one horse and one rabbit sometimes. There are some airlines that can only buy one airplane and there are others that can buy 15.

Q. I am speaking of two airlines now that ordered substantial numbers of planes.

A. I can't recall having done so, no.

Q. Let me phrase somewhat differently a question I put

to you before.

[Tr. 3143] Did Boeing consider that TWA's actual deliveries were substantially as those of Pan American and American †

A. As contracted for!

Q. The fact. I am speaking of the fact now.

A. Well, that's as contracted for.

Q. What actually happened in your opinion. Were TWA's actual deliveries substantially as Pan American and American

A. As the deliveries actually occurred, no, I don't think

they were.

- Q. As contracted for, in your opinion, were TWA's deliveries substantially as early as Pan American's and American's?
  - A. No. I don't think they were.

Q. Take the actual deliveries. How much earlier should TWA's deliveries have been to make them substantially as early as those of Pan American and American?

A. I can only answer that question one way. Had all three airlines come in at the same time, the schedules w are looking at here would not have been the schedules neces

sarily.

I mean, we would have to take it in the light of what our production capability, what are the de- [Tr. 3144] mand of these three airlines relative to others, and we would me have quoted necessarily the same schedules we did to Pa American or American.

Q. Or to TWA!

A. Or to TWA.

- Q. To how many airlines could Boeing or was Boeing able rather, to provide substantial equality by deliveries at or about the same time?
- A. Well, this depends on the program itself and what our capability is. In one program, we may be able to afford substantial equality to maybe four, five or six. Another—
  - Q. I am speaking of the 120s, in the fall of 1955.
  - A. I would think three or four.
  - Q. Three or four?
  - A. Yes.

The Special Master: And the 320s?

The Witness: I would think, Mr. Brownell, in that case in the order of three or four.

- Q. In answer to a previous question you referred to these schedules. Did you mean the reallocated schedules or the actual deliveries?
- A. Well, there was a question preceding that I'd have to go back to.

Tr. 3145] Mr. Hayes: Can you read that where he referred to these schedules so Mr. Connelly will know exactly what he had in mind?

(The record was read.)

The Witness: I am speaking of contract schedule.

- Q. The schedules you are looking at here, do you mean those attached, TWA—
- A. Well, then we have to assume that the same acceleration would have to take place as far as reallocation is concerned.
- Q. The reason I ask is because the only schedules that are before us and included in your statement are actual deliveries and reallocated deliveries.

That is why I asked.

A. The point I was trying to say is it may not have been these schedules at all if we had four customers or three customers in at the same time.

Q. You are speaking now of contract schedules that might have happened?

A. That's right.

I was saying beyond that, I would have to assume that such acceleration as did occur would have occurred in that instance.

[Tr. 3146] Q. Were all of them benefitting to the same degree?

A. Well, to substantially the same degree, yes.

Q. You were not specifically referring, by reference to these schedules, either to the actual deliveries which are attached to your statement or to the reallocated deliveries

A. That's right, neither.

Q. When did TWA commence negotiations looking toward the purchase of jets with Boeing?

Mr. Sonnett: Will you read that question back!

(The question was read.)

Mr. Sonnett: I don't know that there is anything in this record indicating that TWA ever did at any of the years here involved.

The Special Master: Does the question cover

Hughes Tool as well as TWA?

Mr. Hayes: No, TWA at the moment. I am not thinking of Hughes Tool.

The Witness: I am glad you asked that question.

A. When did TWA-

Q. Yes.

Tr. 31471 A. It is the time they bought their first fan powered airplanes, and I cannot remember the exact year.

## Connelly-Cross

- Q. In 1954 or 1955-
- A. No.
- Q. —did you have any negotiations with TWA personnel?
  - A. In 1954 and 1955?
- Q. Yes.
  - A. With TWA personnel-
  - Q. Right.
- A. -acting for and in behalf of Hughes Tool Company?
- Q. Did you have any negotiations with TWA personnel was the question.
  - A. I'm sorry. Yes.
  - Q. With whom?
- A. Mr. Rummel, Mr. West, quite a few of the engineering people in Kansas City, I think Mr. Rourke, Mr. Parmet participated in them. I can't remeber all of the people, but there were a good number of TWA people participating in the negotiations.
  - Q. Mr. Damon ?
  - A. No.
  - Q. No negotiation with Mr. Damon?
  - [Tr. 3148] A. Not to my knowledge.
- Q. Did you conduct all of the negotiations, or were others conducting negotiations besides yourself?
- A. Well, there had been some discussions. Here again, this is—I was not a party to these discussions.
  - Q. You were not a party to them?
- A. No. This is prior to the time we actually sat down around a table and started negotiating.
- Prior to that time, there had been some discussions, I think principally by telephone, and I would presume between Mr. Hughes and Mr. Allen and Mr. Beall.
  - Q. But you were not party to any of those discussions?
  - A. I was not a party, no.

- Q. How far back did the discussions with Mr. Hughes go, if you know?
  - A. I do not know.

Q. Do they go back to 1954?

A. Yes, I believe they probably did.

- Q. Were there any discussions with TWA personnel as early as 1954?
  - A. That I don't know.

Q. You mentioned before it was TWA personnel acting

for Hughes Tool Company.

[Tr. 3149] Who told you that TWA personnel with whom you were negotiating were acting for Hughes Tool Company.

A. That's the word that was transmitted to me through

Mr. Allen after discussions with Mr. Hughes.

Q. That is the way you learned it?

A. Yes.

Q. Was there any reason given as to why they were acting for Hughes Tool Company?

A. No. I think this is the way equipment acquisitions

had been accomplished over some period of years.

- Q. Had not TWA bought directly also from other air-
  - A. I don't know.
  - Q. You don't know?
  - A. No.
- Q. You really don't know how TWA acquired prior a aircraft, do you?

A. I suppose the answer to that is no.

Q. Were you told that TWA was not able to make the down payments that would be required?

Mr. Sonnett: I object to this as irrelevant wholly outside the scope of the examination, and in an

## Connelly-Cross

event what TWA personnel acting for Mr. Hughes might have said would not be binding on TWA.

[Tr. 3150] The Special Master: I am not just sure what Mr. Hayes is trying to get at here so I will allow the question subject to later motion to strike.

The Witness: Would you repeat the question, please?

(The question was read.)

- A. No, that isn't the point that was told to me, but there is a point.
  - Q. All right, let's have it.
- A. Mr. Hughes wasn't interested unless he got the first large block of airplanes. That's what was passed on to me.
  - Q. When was this?
- A. This was just prior to the time that we made our first overtures to the airlines.
  - Q. That was back in 1954 then?
  - A. Or the early part of 1955.
  - Q. It was at the time of the prototype, is that it?
- A. After we had demonstrated the prototype and obtained airlines inputs as to their desires and comments.
- Q. When you were told that Mr. Hughes wanted—did you mention a number of early delivery positions?
  - A. Oh, I heard the figure 50, yes.
  - ITr. 31511 Q. 50.
  - A. Yes.
  - Q. Who told you this by the way?
  - A. Mr. Beall.
- Q. Did he also tell you that he wanted those early delivery positions for TWA?
  - A. He wanted the first 50.

- Q. For whom? Were you told that or weren't you told anything in that regard?
  - A. Well, to us it was quite obvious.
  - Q. I want to know what you were told, Mr. Connelly.
- A. I can't remember whether he said for Hughes Tool Company or for TWA.
  - Q. You have no recollection on the subject?
  - A. I have the recollection I just outlined, yes.
- Q. As to what he wanted them for you don't know? You have no recollection as to what you were told in that regard, is that correct?
- A. Well, if you are asking did he say he was buying them for TWA, the answer is no, as far as I know.
  - Q. Did he tell you-
  - A. Who?
- Q. Did Mr. Hughes tell you that he was not buying them for TWA?

[Tr. 3152] A. No.

- Q. You really don't know what? You were not a party to the conversation?
  - A. That's what I said to begin with.
- Q. So you don't know what may have been said except as to what may have been reported to you later by Mr. Beall?
- A. That's correct. I thought I made that clear. It was hearsay.
  - Q. When did Pan American commence negotiations?
  - A. Before the prototype was built?
  - O. And continued such negotiations?
  - A. Correct.
- [Tr. 3153] Q. When did American commence negotiations?
  - A. Very shortly after prototype flew.
  - Q. And continued such negotiations?
  - A. Right.

# Connelly-Cross

- Q. When did United commence negotiations?
- A. At about that same time.
- Q. And continued until they eventually bought-
- A. Until they made a decision, yes.
- Q. What foreign airlines commenced negotiations at about the same time that Pan American, American and United did?
- A. Well, now we have to switch over to the 320 because that was the long-range intercontinental airplane.
- Q. When did you commence negotiations looking toward an international plane?
- A. At the same time we were negotiating on the long-range airplane.
  - Q. When was that? Can you fix the time?
- A. Yes, it was the month of December, the early part of January.
- Q. Had you had negotiations with the foreign airlines prior to that time?
- A. No, these offerings were all made about the [Tr. 3154] same time?
- Q. No, the question was had you had any negotiations looking toward the possible purchase of an international plane assuming you would produce one?
  - A. At that same time, yes.
  - Q. Not before then?
  - A. Not before, no.
- Q. When did Pan American decide to buy jets, regardless of when the contract was signed, in the sense that you considered a firm agreement?
- A. That agreement was signed during the month of December 1955, if I recall.
  - Q. You mean the 121?
  - A. No, I'm speaking of the 320.

- Q. No, I am speaking of the 121 now, the first order. I think you will find the agreement was signed October 13, 1955.
  - A. I was going to say around October.
- Q. Was there a date prior to that at which you considered there was a firm commitment running between Pan American and Boeing?

A. I can't say there was a date, but we anticipated that

they would buy, yes.

- Q. Prior to October 13th at least you considered ITr. 3155] it a firm agreement to the point that you would not have entered into a contrary agreement with another airline; is that right?
  - A. That is correct.
- Q. How about American, when did you arrive at a similar understanding with American? Your contract, I can tell you, is dated March 1, 1956.
- A. Yes, but not the letter contract. The letter contract precedes that several months.

I can't recall the exact date.

- Q. How long after Pan American's commitment was it!
- A. Very shortly after that.
- Q. So that would bring it back to October 1955 or earlier?
- A. It wouldn't have been earlier, I don't think. It is in that area, October, November, somewhere in there.
- Q. What about TWA? The contract was signed the day after American's, March 2, 1956?
  - A. The definitive contract, you mean?

Q. That is right.

A. Well, we negotiated a proposed letter agreement with the Hughes Tool Company some time between Christmas and New Year's of 1955. I say proposed. I can't ITr. 31561 remember when it was signed.

# Connelly-Cross

- Q. It was signed either in late December or early January 1956, was it not?
  - A. I'm not sure.
- Q. How about the foreign airlines, with respect to the 320s now?
- A. They signed—BOAC—not BOAC, but Air France, Lufthansa, Sabena signed in the very early spring of 1956.
  - Q. Pan American was in December of 1955?
  - A. That's when we signed an agreement.
- Q. When was the commitment made with Pan American?
- A. I can't recall exactly. It was not too long before the agreement was signed.
- Q. Were there commitments received from any of the foreign airlines prior to the spring of 1956?
  - A. Not prior to the spring of 1956.

The problem here again is a matter of not only airline management decision, but government approval.

- Q. On the 121s, Pan American ordered 20 and American ordered 30?
  - A. That's correct.
- Q. Was Pan American given any preference [Tr. 3157] over American even though it ordered ten less airplanes?
- A. Not much except to the extent they had the first three airplanes.

We had a contract commitment with Pan American that they would get the first six airplanes.

- Q. You were negotiating with Pan American and American at the same time, were you not?
  - A. Yes.
  - Q. Why did you make that commitment?
- A We made that decision because there was no competition as between American Airlines and Pan American

Airlines, and American Airlines because they were second, obtained some priority of their own.

- Q. Was American negotiating with Douglas?
- A. Yes.
- Q. Was Pan American?
- A. Yes.
- Q. The negotiations with Boeing by both airlines were concurrent?
  - A. Yes.
- Q. Is this your idea of or your opinion of what constitutes substantially equal treatment of the two airlines?
- A. Yes, if you take the competitive picture into ITr. 31581 account I think it is.
- Q. What do you mean by that, take the competitive picture into account?
- A. What I just said. There is no competition between Pan American and American.
- Q. Was not American just as anxious to get jets as Pan American?
- A. Yes, but when we talk about substantial equality, I think we have to relate it to the competitive atmosphere the airlines are faced with.
- Q. You don't state that in your prepared statement, do you, Mr. Connelly?
- A. Well, it is kind of a unique situation with Pan American. We were anxious to develop the foreign market and the best way to do that, of course, is to get an operator operating our planes.
  - Q. The best way to do that and I missed something.
- A. I say we were anxious to develop the foreign market, and it was considered to be very desirable to have Pan American operating airplanes as soon as possible.

### Connelly-Cross

- Q. So this is a new policy or additional policy that Boeing decided upon when they gave Pan American [Tr. 3159] a preference; is that right?
  - A. I wouldn't consider it as such, no.
  - Q. It was a decision at any rate?
  - A. It was a decision, yes.
  - Q. That in order to-
- A. We think it was consistent with an interpretation of our policy.

When you talk of substantial equality I think you have to relate it to the situation that airlines are faced with.

- Q. This is not in your prepared statement, this conversation, is it, Mr. Connelly?
- A. I don't know that—well, personally and I could be wrong, I don't see the pertinence of it to this particular situation.
- Q. Whether you see it or not, the question is this consideration of the competitive atmosphere was not set forth in your prepared statement? Am I right in that or wrong?
  - A. I think it is inferred.
  - Q. Where? Show me.
- A. When you use the words "substantial equality," I think—what else can it relate to?
- Q. Show me where you refer to the competitive ITr. 31601 atmosphere as a consideration determining substantial equality. You have the statement before you.
  - A. It wasn't stated specifically in here.
  - Q. Where was it stated inferentially?
- A. I think the entire wording of the thing when we speak of substantial equality—what else do we mean by substantial equality?
  - Q. I don't know. I am asking you.
- A. It has to have relation to the competitive situation. Otherwise, there would be no purpose to it.

- Q. But in your statement you are talking of substantial equality among Pan American, TWA and American at least so far as the 120 series is concerned; are you not?
  - A. That's correct.
- Q. Where in either the actual deliveries or in the reallocation which you find reasonable, or in your text do you find any reference to the competitive atmosphere being considered as among those three airlines?

[Tr. 3161] • • • The Special Master: This always means, of course, in addition to whatever you have testified to before.

- A. Nowhere.
- Q. Did you have any discussion with anybody prior [Tr. 3162] to your testimony with respect to this matter of competitive atmosphere?
  - A. At this proceeding, Mr. Hayes?
  - Q. That's right-
  - A. No, sir.
  - Q. -prior to your testimony in this proceeding.
  - A. No, sir.

Q. To continue a moment with this getting of planes on the international area, the plane as to which you gave Pan American priority over American was one that was as you have already testified primarily a transcontinental plane rather than an intercontinental plane, was it not?

A. Its capabilities were much better related to a domes-

tic operation.

Q. That's right. As a matter of fact, you described its capabilities intercontinentally as marginal earlier in your testimony.

Was it that you were hoping to persuade foreign [Tr. 3163] airlines to buy the 121?

A. Well, initially, yes, we hoped that this would influence foreign sales. When it appeared that the JT-4 engine, the larger engine would become available, we looked at the 120 series as to what might be done to increase the gross weight capability of that airplane to increase its range, payload capability, and it became very evident that the more prudent move was to go to a larger airplane, the 320 series incorporating that engine.

Q. Before Boeing came out with the larger, the 320 series, was Douglas offering a plane that was capable of

dependable intercontinental operation?

A. Well, I would say at about the same time they came out with two series of the DC-8, one powered with the J-57, which is the same engine we had on the 120 which would be a very marginal airplane again over ocean routes.

And I would say it was about the same time that they came out with a JT-4. It could have been a little bit ahead

of us. I am not exactly clear.

Q. Isn't it a fact that they were ahead of you in offering an intercontinental plane?

A. Well, if so, not very much.

Q. On this business of substantial equality in ITr. 31641 early deliveries, suppose one carrier orders 15 airplanes and another orders 25 airplanes. Would it be substantial equality to deliver the 15 airplanes ordered by the third carrier as soon as 15 were delivered to the second carrier, or would the first carrier receive a sort of ratable distribution so that at the end of the delivery period they would each have the full order?

A I suppose every airline would dispute that point, I mean, argue that point back and forth, but if we tried to

move up, say, an order for 30 airplanes in the same period as somebody was ordering 15, we'd be out of business with any other customer.

So we are the ones that quoted the schedules that extended over a period of time. The benefit to the man buying—the airline buying 30 airplanes is assured price and delivery.

- Q. Let me ask you this question: By way of date would TWA or Toolco—and I use the terms interchangably as you do—have had to place orders for the 131s to have been accorded what you consider substantial equality with Pan American and American?
- A. At or about the same time that we sent out our initial, you might say, advice to the industry of our tentative decision to go forward with the airplane.

[Tr. 3165] Q. When was that?

- A. That was, I'd say, late spring of 1955, in that area. I could be off a couple of months, but in that area.
- Q. That is the date at which it would have had to place its orders?
  - A. To be concurrent with other operators, yes.
- Q. If TWA in the spring of 1955, or whatever period you have in mind in your answer, had ordered eight 131s as in fact it did in its original order, would Boeing have afforded TWA substantial equality in early delivery positions with Pan American and American?
- A. You mean as to relative numbers of airplanes delivered during the period they got their eight airplanes!
- Q. I mean as to the early deliveries, to the three air carriers.
- A. Well, if it is related to should the others be slowed down or they speeded up, to the extent of eight airplanes across the board, we wouldn't consider this to be an equi-

table solution to the problem, no. Quantity had something to do with it.

- Q. Quantity was of some importance then?
- A. We had mentioned that in the statement.
- Q. I know you did. I am trying to find out now [Tr. 3166] how important quantity is or was in Boeing's mind at that time. Just how important was it?
  - A. Well, it is quite important to us.
  - Q. Major importance?
  - A. Yes, it was of major importance.
- Q. How many aircraft would TWA have had to order in order to get substantial equality with Pan American and American?
  - A. Again, having ordered at the same time?
- Q. That is right. In the spring of 1955 period that you mentioned.
  - A. Well, I would say in the order of 20 or 25 airplanes.
- Q. Was Boeing advised by anyone on behalf of TWA or Toolco why it was planned to place a relatively small order initially for the 131s?
- A. Well, my own information would be that Hughes or TWA were not too happy with deliveries after June of—let's see—this was 1959, I guess it was. Well, anyway, the first period of deliveries. Anything beyond June of that year, they were not too interested in.
  - Q. Was it only because of delivery dates?
- A. I think there were occasions that they were at that time more interested in the big airplane, down the ITr. 31671 line, than a great number of 121s because at that time, of course, they were dickering with Convair for the 880.
- Q. Were you ever advised by anyone representing TWA or Toolco that Toolco considered the 131 a marginal plane in the light of its routes being both domestic and interna-

tional and were hoping for a plane that would be available and useful on both types of its routes?

- A. I think that goes back to what I said their interest was more in the larger airplane. A larger type airplane, I should say.
  - Q. That was not available in the spring of 1955, was it!
    - A. It was not.
  - Q. It was not even available in October of 1955, was it!
  - A. No.
- Q. You knew, did you not, that the Tool Company and TWA were carrying on negotiations with Convair?
  - A. Yes, sir.
  - Q. How did you know that?
- A. I don't know any single thing to say. There was every evidence, Mr. Hayes. People were in San Diego, we knew that.
- Q. Who were these people who were in San Diego, do [Tr. 3168] you remember that?
- A. Well, Mr. Rummel for one. I don't know. I think they probably had a fairly large engineering group working on the specifications down there, but I couldn't name them
- Q. Did you know that the endeavor in those Convair negotiations was to obtain a plane that would be suitable on both the domestic and international routes for TWA!
- A. I understood at the very beginning of the negotiations they were looking for that type of airplane, yes.
- Tr. 31691 • Q. At the same time that you knew that Toolco and/or TWA people were negotiating with Convaindid you know whether similar negotiations were going on with any other aircraft manufacturer on their behalf?
  - A. On their behalf?

- Q. Yes.
- A. No, sir.
- Q. You don't know anything about that?
- A. No.
- Q. How much earlier than the dates the Toolco orders were actually placed would they have to have been placed in order to obtain the substantial equality with Pan American and American of which you speak?

A. They would have had to evidence sincere interest [Tr. 3170] and proceed with negotiations in good faith at the same time the others did, about the middle of 1955.

- Q. In your negotiations with Pan American, prior to the time some commitment was arrived at whereby they purchased, were there any discussions as to the possibility of early deliveries being made to TWA?
- A. I can't recall any specific discussions to that effect, but I am confident that they, as well as every operator, had one eye out for the other and the possibility that this could happen.
- Q. How about the negotiations with American, did it
- A. Well, they were aware that many of our people were working with American Airlines.
  - Q. Who were aware?
- A. Our engineering people in respect to the airplane itself.
- Q. No. I said in your negotiations with American, was there any discussion with respect to delivery positions that TWA might receive?
- A. None that I can recall specifically.
  - Q. You can't recall?
- A. Nothing specifically, no. Any more so than any other airline.

ITr. 31711 Q. Would Pan American or American have ordered Boeing equipment if early or substantially the same delivery positions were being offered and contracted for by Boeing for planes for TWA?

A. We certainly hope so, but I have no way of knowing whether they would or not.

Q. Do you know whether or not either Pan American or American would have been willing to give up some of their early delivery positions so that they could be offered to TWA?

[Tr. 3172] Mr. Sonnett: The same objection. Also, it is irrelevant.

The Special Master: Do you know whether they would have objected?

The Witness: Well-

The Special Master: Of your own knowledge.

The Witness: (continuing) —I can't answer the question as it was put.

I would like to answer the question in another way, if I might.

Mr. Hayes: Try to answer the question.

The Witness: All right.

Mr. Hayes: That is this question, not another question.

The Witness: Would they have given up some positions? The answer would be no, if those positions had been offered to them and accepted and contracted for. But had all three operators come in at the same time, it wouldn't necessarily have been that schedule.

# Connelly-Cross

## By Mr. Hayes:

- Q. When you say "contracted for," are you talking about a final binding contract?
  - A. No, I am talking about a commitment.

[Tr. 3173] Q. A commitment?

- A. Whether it be written or oral. Does that answer the question, Mr. Hayes?
  - Q. That is all the answer I want.

A. Good.

Mr. Sonnett: I thought it was more than you wanted, Mr. Hayes.

Mr. Hayes: No, it is exactly what I wanted, I think we will get along much better, Mr. Sonnett, if you confine yourself to your problems.

Mr. Sonnett: I will try.

## By Mr. Hayes:

- Q. What would Boeing have done with respect to deliveries of the 120s among TWA, Pan American and American, if TWA had ordered first?
- A. Well, it's easy to assume that the situation could have been reversed.
- Q. How many aircraft, 120s, would Boeing have been willing to commit to TWA before it made a commitment for any deliveries to either Pan American or American?
- A. This would largely depend on how large an order they placed.
- Q. Assume 15.
- A. I doubt if it would have been more than those ITr. 81741 actually required for certification of the airplane under those circumstances.
- Q. How many would they be?
- A. Well, we eventually used three.

- Q. What do you mean you eventually used three?
- A. Well, this isn't a precise determination four years before you certificate an airplane. I mean, there are reasons that we may want to add one to the program as we go along.
- Q. When you say "we eventually used three," to what were you referring, Mr. Connelly?
  - A. Three airplanes for certification.
  - Q. Where did you use that?
  - A. Where!
  - Q. Yes, and when?
- A. Well, during the period prior to the delivery of the airplanes.
- Q. You mean your contracts with airlines provided just for three deliveries to the first customer?
  - A. No.
- Q. What do you mean, then, by the words "we eventually used three"? I don't know what you mean.
  - A. We usually used three for certification purposes.
  - Q. But you did not do that on the 120s, did you? [Tr. 3175] A. I am speaking of the 120s.
  - Q. Didn't you give six to Pan American first?
- A. We are not addressing ourselves to the same thing. I said in the event TWA had ordered airplanes first in a quantity of 15, I questioned that they would have had any more greater priority than receiving the first airplanes that were required for certification, whether it was one, two or three.
- Q. Then you added the language that three was what you eventually used and I was wondering to what you were addressing yourself by the phrase "three was what we eventually used"?
  - A. Well-
  - Q. Where-

- A. We could have committed ourselves, say, to two and eventually used three.
  - Q. That's all you mean by that?
- A. That's right. I mean one was a physical requirement, the other is a contract requirement.
- Q. How many delivery positions do you consider to be early delivery positions, say among three different airlines?
- A. Well, this would have to be related to their respective competitive posture. Some airline could be [Tr. 3176] second in line and still be early, as far as his particular competition is concerned. It isn't an easy answer to give.
  - Q. Is this the best answer you can give us?
  - A. Yes, I think so.
- Q. What was the policy, if any, of Boeing with respect to later delivery positions?
  - A. You mean in granting of options or-
- Q. Letters of intent, the commitments you were making and so on. Did you have a policy with respect to later delivery positions?

Tr. 31777 • • • Mr. Hayes. Let me rephrase it. It is faster.

# By Mr. Hayes:

- Q. Did Boeing have any policy as to how it allocated the later delivery positions among three or more airlines, or two or more?
- A. No, this was a matter of what was available at the time a proposal was requested, and such subsequent actions as the airline might take.
- Q. Do you consider that the allocation between American and Pan American on the 120 series provided substantial equality between them?
  - A. Yes, I do. I think I answered that once before.

Q. If you did, I have forgotten. It is entirely possible. I have a short memory.

Under Boeing's production plans, when it decided to proceed with the 121s, whatever the date was, how many air lines per month did it expect to produce and be available for delivery, of course, I mean?

- A. I can't remember that figure. It was subsequently changed, as we moved along.
- Q. In your statement, Mr. Connelly, at page 3, the bottom of the page, Paragraph (d), you say:

ITr. 31781 "Since Pan American, TWA and American would all have been seeking early delivery positions of the 120 series, Boeing might have selected TWA as the first customer but most probably would have selected Pan American as the first customer for the 120 series, affording Pan American the first three delivery positions."

Can you tell us the considerations which would have led Boeing to have most probably selected Pan American as the first customer for the 120 series?

- A. Not without including (e).
- Q. Can't you separate the two?
- A. No, sir, I cannot.
- Q. The 120 series was available before the 320 series, was it not?
  - A. Yes.
- Q. The commitments would have been made for the 120 series before you knew you were going to produce a 320 series?
- A. However, there was an overlapping in the negotiations on the smaller and the larger airplanes.
- Q. At the time that the 120 series were committed for, you were not sure you were going to produce the 320, were

you! You were hopeful, but you were not sure; is [Tr. 3179] that correct!

A. That depends on the time we speak of.

Q. You previously said mid-1955 in your testimony, Mr. Connelly.

The Special Master: Is that the time you want to have this question relate to?

Mr. Hayes: Assuming that he has the same time in mind.

The Special Master: Mid-1955.

- A. That's correct, but there were concurrent discussions going on on the larger airplane at that time which shouldn't be ignored.
- Q. Were you sure at that time that you were going to produce the 320 series?
- A. I can't say that we had made that final decision.
- Q. You had three air carriers who were ordering substantially the same number of planes of the 120 series. As of that time, when the commitments for delivery would have been made, I asked you what were the considerations that would have led Boeing to select Pan American as the first customer for the 120 series?
- A. I am a little foggy on—how many parties do we have at this time?
  - Q. Pan American, American and TWA. Tr. 31801 A. All at the same time?

Q. That is right, under your assumption.

A. Well, again, I have to refer to (e) because I feel in my own mind there probably would have been a renegotiation, so to speak, between ourselves, Pan American and TWA when the 320 became a firm program.

Here again, both airlines were very anxious to get early deliveries. Somehow it would have to be resolved. Pan American had ordered DC-8s, and in a sense was protected on the long range, having bought the airplane with the larger engine.

I think they would be—I feel quite confident in my own mind it was more important to them at that time to be first, irrespective of what airplane it was, than to center upon the 320 as being the—their desire, as far as early deliveries were concerned.

- Q. It was more important to Pan American to be first!
- A. To Pan American to be first.
- Q. Why more important for Pan American to be first than to TWA to be first?
- A. Well, we have to make two decisions here. I don't think—
- Q. If I may interrupt, Mr. Connelly. I am not asking ITr. 3181] you to make any decision. I am asking you what considerations were in Boeing's mind in mid-1955?
- A. That's what I am trying to say, the decisions that we had to make at that time then centered around both airplanes.
- Q. But you did not have the other airplane. That's what I am trying to find out.
- A. Well, discussions were in progress, and there was considerable interest in the airplane. In the final analysis, this is what I believe would have happened, even if it required as between ourselves, TWA and Pan American, a reallocation.
- Q. What would have actually happened, so far as you know of what Boeing's policy was in 1955 or mid-1955, to take your time, what kind of commitments would have been

# Connelly-Cross .

made to the three airlines who were ordering at the same time? Can you tell us that?

A. If you stand alone and ignore Paragraph (e)-

Q. That is exactly what I am asking you to do.

A. (continuing)—probably the situation would have been reversed as between Pan American and TWA and American.

Q. What would the situation be, then, after you had gone through the reversal?

Tr. 31821 A. And here again we are considering they would have bought essentially the same number of airplanes.

Q. That is right.

- A. Well, it could very well be that TWA would have taken Pan American's place and Pan American would have been a second, and American third.
  - Q. Could have been?
  - A. Could have been.
  - Q. Anything could have been, Mr. Connelly.

A. That's right.

- Q. We are not talking about what could have been. I am asking you what Boeing's policy at that time would have dictated. You have told us that you were not going to let the airlines run your business, that you were running your business.
- A. Well, we think we would consider that to be substantial equality.

Q. What commitments would you have made in accordance with your policy?

A. I can't tell you what commitments we would have made under hypothetical situations. It would be impossible to tell you that.

Q. Aren't you in substance doing that in your state-

[Tr. 3183] A. No, I am not. I am saying something is a reasonable estimate.

Q. You are not saying that Boeing would have done what is set forth in the reallocation, then?

A. No, I am not saying that any specific reallocation is necessarily precisely exact. I am saying the overall effect, in my opinion, is a reasonable estimate.

Q. You are not saying, as I gather from your last few answers, that Boeing would have picked Pan American as the first?

A. If TWA was first?

Q. No. If TWA and American were ordering at the same time.

A. And Pan American?

Q. That is right.

A. I would guess, eliminating (e) again, that probably Pan American would have been first, unless TWA was willing to compromise the configuration of their airplane so that we could meet our production schedule.

Q. Now you are going to Paragraph (f), aren't you!

A. That's right.

Q. Why would not American have been chosen as the first? It ordered the largest number of airplanes.

A. Well, it is certainly possible that they could IT. 31841 have been first.

Q. So that might have happened, also?

A. That could have happened, too.

Q. So that by this statement in Paragraph (d), to which I have directed your attention, you are not saying that any of this would have happened?

A. No. My thinking, again, here is a combination of (d) and (e).

Q. Of course, bringing in (e), you have to indulge in some hindsight, do you not, Mr. Connelly, since (e) was not a fact in mid-1955?

# Connelly-Cross

- A. No, I don't think it is necessarily hindsight. I think you can foresee this situation developing.
- Q. You can expect it, but foresee in the sense of certainty, that was not the case; isn't that correct?
  - A. Well, with a reasonable certainty.
  - Q. You hoped, didn't you?
  - A. Not necessarily hoped. It was stronger than a hope.
  - Q. You had no detailed specifications-
- A. We were reasonably convinced, if you want to put it that way, that this was going to happen.
- Q. You had no detailed specifications for the larger plane at that time, did you?
- [Tr. 3185] A. None that we had issued, but they were well along in preparation.
  - Q. Had you discussed them with any of the airlines?
  - A. Oh, yes.
  - Q. With what airlines?
  - A. Pan American.
  - Q. Anybody else?
- A. I think—well, it was—about the same time we were presenting the performance data on the airplane and preliminary specifications to the overseas airlines.
- Q. Did you do it to any other airlines? Specifically, did you present them to TWA at that time?
- A. I believe we did.
  - Q. Are you sure of that?
  - A. I am not sure, no.
  - Q. You can't testify to that as a fact?
- A. No, I cannot. But we were certainly anxious to cover the whole market.
- Q. The fact of the matter is that the 120 series was the only series in which American was interested, isn't it, at that time?
- A. Yes.

- Q. They ordered the largest number of planes?
- A. Right.

Tr. 31861 Q. And yet, according to your statement, Pan American would likely have been selected as the first customer?

- A. Again, I have to say my opinion here is strongly motivated by a combination of (d) and (e).
- Q. Whatever it is motivated by, that's what you suggest—
  - A. Yes.
  - Q. (continuing) -in your statement?
  - A. Yes.
- Q. Actually, your statement is in very large part speculation as to what might have happened, given certain premises?
  - A. Well, the whole thing is speculation.
  - Q. Your whole statement?
- A. No, I didn't say that. The whole situation is based upon hypothetical assumption.
- Q. I am talking about your statement. That's based, too, on hypothetical assumptions?
  - A. As spelled out in-
  - Q. That's right.
  - A. That's right.
- Q. In no sense are you testifying that this would have happened with respect to any particular portion of your statement?

ITr. 31871 A. I cannot say that this definitely would happen. I say it is a reasonable estimate of what would happen.

- Q. But there are various other reasonable estimates that could be thought up as well, are there not?
  - A. This is quite possible.
- Q. Not only possible, but it is a fact that you could think up equally reasonable alternatives, could you not?

## Connelly-Cross

- A. I have no comment on that. I haven't studied the situation in that light.
- Q. Wouldn't it be equally reasonable to give the preference as to the 120s to American?
  - A. It could have happened.
- Q. And it would have been equally reasonable, would it not? I am using your word "reasonable," Mr. Connelly.
  - A. It could have been.
  - Q. Equally reasonable, right?
  - A. An equally reasonable estimate, ves.
- Q. The same is true with your Paragraph (e), which you like, that it would be equally reasonable to give the preference to Pan American as against TWA, would it not?
- A. I don't personally think so, no. It could have happened. I don't say that. But here one could foresee ITr. 3188I a situation where in the long-range market there would be a conflict between Pan American and TWA as to who was going to be first in that market. We didn't care which one it was, just so one of them was.
  - Q. If under Paragraph—
  - A. I have not finished.
  - Q. I am sorry.
- A. Now, if you look at it, as you could see it at that time, Pan American, having ordered Douglas DC-8s with the bigger engine, were protected to some degree in the long-range market.

On the other hand—at the same time I should say Pan American was keenly eager to be first in the market, even with an airplane that didn't have a total range capability they would like to have.

But being first in the market creates an image, there is an advantage from the standpoint of publicity. And I think

that in the final showdown, where we had to select one or the other to be first on one program or the other, even if it required some reallocation between the two, that Pan American's election would be to be first, rather than have the first deliveries of 320 airplanes.

Now, that's my reasoning for what it is worth.

- Q. In mid-1955, when you say you cannot separate [Tr. 3189] (d) and (e) and it was very much in your mind or in Boeing's mind, (e) was, in mid-1955, by that time Pan American had not ordered any Douglas DC-8s, had it?
- A. They hadn't ordered them, but they were awfully close to it.
- Q. You were hoping to sell them Boeings instead of DC-8s, were you not?
- A. No. We were pretty well convinced they were going to buy both.
  - Q. At any rate, there was no order placed?
- A. As a matter of fact, they had already bought the engines for the big airplanes, so we were pretty well convinced what they were going to do.

[Tr. 3190] Q. But if under (d) you had given American preference, wouldn't it be equally reasonable to give Pan American the preference under (e)?

- A. It could have been.
- Q. So far as American was concerned, in its negotiations with Boeing, did it insist that it obtain deliveries of Boeing jets before Boeing jets were delivered to any other airline, domestic airline?
- A. They expected to have a—some preferential deliveries over any other competing airline.
- Q. Did they say how many they wanted to be preferred as to?

A. Yes, there is no question at some time they all want at least ten or twenty. This is a typical situation.

We didn't offer them any more than six aircraft.

- Q. Were they preferred to the extent of six aircraft over any other domestic customer?
- A. Well, I guess the best way to answer that is to say our contract with TWA or the Hughes Tool Company provided that we were not to deliver any more than 12 aircraft prior to the month in which-or prior to the time they received their first certificated airplane.

Tr. 31911 Q. To whom were those 12 aircraft to go?

- A. Six to Pan American and six to American.
- Q. Was Toolco or TWA advised who were to get those 12 aircraft prior to the time the contract was signed?
- A. I can't recall having mentioned names specifically. but I'm sure they were aware of it, who they were.
  - Q. What makes you so sure?
- A. Oh, comments were made that would indicate that they had a pretty good knowledge.
  - Q. Comments were made by whom to whom and when?
- A. By Mr. Rummel, Mr.—primarily Mr. Rummel to Mr. Olsen, Mr. Wells and myself.
  - Q. When?

ľ

e

1

n

Y

f

g

e

-

6

f

ľ

.

d

- A. At the time we were negotiating a proposed letter agreement.
  - Q. What were those comments that he made?
  - A. Oh, I can't recall what they were.
  - Q. You have no recollection?
  - A. No.

As a matter of fact there could have been-I am sure there were some public announcements prior to that time both by Pan American and American Airlines. I'm sure—

Tr. 31921 Q. As to the fact that each had a preference

of six?

### Connelly-Cross

- A. No, no, that they had purchases, so they knew at least who had purchased airplanes.
  - Q. Yes. Others had purchased also, had they not?
  - A. Yes, one other customer for three.
- Q. You mentioned as one of the considerations in entering into these agreements was the establishment of Boeing as the manufacturer. You stressed that Boeing had to consider first its own program?
  - A. Right.
- Q. Did Boeing work with any particular airlines in preparing the detailed specifications for the 120 series?
- A. We worked with every airline that would work with us.
  - Q. Who were the airlines who worked with you?
- A. Pan American, American, United. I'm sure some discussions were had with TWA, even before there was any interest expressed.

Continental Airlines, Braniff.

Q. These are all airlines who worked with Boeing prior to the finalizing of the specifications for the 120 series!

[Tr. 3193] A. That's correct.

- Q. Among those airlines, did some work more closely and spend more time with Boeing than others?
  - A. Yes, I think Pan American and American.
- Q. Between those two, would one spend more time and work more closely with Boeing than the other?
  - A. No, I think it was about an equal effort.
- Q. Was an effort made to produce in detailed specification a plane that would be acceptable to both of them with a minimum of configuration changes?
  - A. No.
  - Q. What was the effort?
- A. Well, they were individual efforts as far as their particular requirements were concerned. And it was our

# Connelly-Cross

problem obviously to sift these things out and determine what our final basic configuration should be.

Now, one reason that these two airlines participated very heavily in the initial discussion is because they have very large engineering departments and considerable talent. TWA does also, but as I recall it had not reached the degree of interest in TWA to where the extent of the effort was as great as were the two major airlines I mentioned.

Now, when you mention Continental and Braniff, ITr. 31941 these are relatively small airlines, they were at that time quite small and they are today, and while they participated they were not in the position to contribute as much toward the finalization of the design as Pan American and American were.

- Q. How about United?
- A. United—it should be on an equal plane with Pan American and American as far as their contributions were concerned.
  - Q. You came up finally with detailed specifications for the 120 series?
    - A. That's right.

at

ng

m-

e-

rk

ne

nv

10

ŀ

nd

8

th

- Q. Was an effort made by Boeing to come as close as it could in those detailed specifications to what all three of those airlines wanted?
- A. We had several standardization meetings to try and bring the various airline desires to the end that we would have as much as possible a common specification.

We succeeded what I would say to only a relatively minor degree.

- Q. How about as between United and American, did you succeed to more than a minor degree there?
- A. Well, no. No, we did not.

I would say that our problems as between the [Tr. 3195] desires of Pan American, American and United were just about on an equal basis.

- Q. Were the planes that Pan American wanted and American wanted and United wanted equally distant so to speak, in their configurations and so on, from the basic specifications that Boeing came up with on the 120?
- A. I can't speak for the United, but of all of them Pan American's detailed specification came closest to our basic airplane.
  - Q. And then American's? Or not?
- A. Of the three airlines, and I'm speaking here of Pan American, American and TWA, American did come closer, but there wasn't—well, there was a fairly substantial difference between the TWA desires and the American desires.

I can remember particularly the air conditioning systems which caused us a great deal of problems.

- Q. From whom did you learn the TWA desire so far as changes were concerned?
- A. I'm speaking now of a time when they were in active negotiations and this was all their Engineering Department.
  - Q. TWA's!
  - A. TWA's.

[Tr. 3196] Q. Not Toolco's?

- A. No, TWA's.
- Q. How about the 320 series, was Pan American's detailed specifications closer to Boeing's basic detailed specifications than was TWA's?
  - A. Yes.
- Q. Was Pan American's closer than the detailed specifications of any other airline?
- A. Much closer than BOAC, or—I would say that in the case of Lufthansa, Sabena and Air France, they were pretty close to the basic specification.

# Connelly-Cross

- Q. But so far as number of planes is concerned, smaller airlines?
  - A. Smaller airlines.
- Q. Was Pan American the principal airline that worked with Boeing to develop the 320 detailed specification?
  - A. Yes.
- Q. Was it part of Boeing's policy or not to give a preference to an airline that had worked most closely with it in developing the specifications for the aircraft?
  - A. Preference in what regard?
  - Q. Deliveries.

Tr. 31977 A. No.

- Q. It was not?
- A. Absolutely not.
- Q. So Pan American received no consideration for the fact that it had worked so closely with Boeing in developing the detailed specifications?
  - A. None at all.
- Q. Did its preference grow out of the fact that its configuration came closer to the Boeing basic specifications than did the others?
- A. Well, the fact that it was very close to our basic specification made it easier for us to meet our program—
  - Q. That is what I had in mind.
  - A. -object. Yes, it would.
- Q. With respect to the 320's, that was also true, was it not, that Pan American's specifications came closer to Boeing's detailed specifications?
  - A. I thought we were talking about the 320's, sir.
- Q. I meant the last question to be for the 120s. Change this last one then. As to the 120s was the preference that Pan American received also attributable at least in part to the fact that its detailed specifications were closer to the

Boeing detailed specifications [Tr. 3198] than that of any other airline?

A. Well, I'd like to say that the fact that—in both cases, their specification was much closer to our basic specification. I don't like to use the word preference.

Q. Maybe you don't. They did have six planes delivered to them before anybody else?

A. It enabled us to do better, meet our program objective.

Q. Was the fact that their specifications were closer to the basic Boeing specifications what caused Boeing to agree that they would have six 120s before any other airline would get any?

A. It was a substantial reason, yes.

Q. What other reasons were there, if any?

A. I would say that's the principal one. I can't offhand think of any others.

Q. In your prepared statement, Mr. Connelly, page 4. Paragraph (f), you laid down as one of the considerations basic to your description of the improvement of delivery positions as reasonable that if TWA would not have compromised delivery positions contemplated in order to gain non-essential specific detailed configurations, going on to say that then the extent of configura- [Tr. 3199] tion variance that existed between Boeing's standard specification and the first Pan American 320 actually produced would not have been exceeded by TWA with respect to the cumulative gross effect on production or certification of the 320-330 series.

What do you mean by non-essential specific detailed configurations?

A. Well, the word "non-essential" is used as an expression of our opinion as measured by our own beliefs and those of other airlines.

# Connelly-Cross

I don't mean that this is considered non-essential by a particular airline who is requesting these things.

Q. Are you referring here to detailed configurations that TWA, in fact, wanted?

A. Yes.

Q. Then in your opinion they were non-essential? Is that what you are saying?

A. I'm saying they are not essential in the sense that the majority of the airlines were operating the airplanes without these items.

Q. But TWA desired-

A. Desired these, and for good reasons in their opinion.

[Tr. 3200] Q. You are not suggesting that TWA considered these variances from the standard configuration to be non-essential?

A. No, no, not at all.

Q. You are referring here, if I understand you correctly, to the changes that were actually made in the planes that were delivered to TWA?

A. That's correct.

Q. I take it too, you are not attempting to suggest here, and correct me if I am wrong, Mr. Connelly, that TWA would have compromised a configuration if it, rather than Toolco, had placed the order for the 331s?

A. I'm not suggesting that they would have, no.

Q. Do you have any basis for believing that TWA would not have insisted on its own configuration?

A. No, this a matter of what is the most important, early deliveries or the incorporation of certain changes in the airplane.

Q. Since these are changes that TWA wanted and had made, do you mean that if TWA had ordered earlier, than, in fact, did order, its delivery positions would have been

improved even though it insisted on the changes to which you refer in Paragraph (f)?

[Tr. 3202] • • • Mr. Hayes: Maybe I could restate it more easily, Mr. Brownell?

The Special Master: All right.

Q. In Paragraph (f) you speak about TWA not having compromised delivery positions by insistence on certain configurations.

Paragraph (f) is part of your statement in Paragraph 3 that the reallocation is a reasonable estimate of improvement.

I ask you, even if TWA had ordered earlier, but would have insisted on the same configuration changes [Tr. 3203] that were actually made in the plane for TWA, would the reallocation still be reasonable?

- A. I would have to answer it this way. We could not have quoted the same positions to TWA under those circumstances as we did quote to Pan American.
- Q. So that the reallocation would necessarily have to be changed?
- A. Or the whole program delayed which obviously we would not be very much in favor of.
  - Q. You would not have delayed the program?
  - A. That is correct.
  - Q. Pardon!
  - A. We would not, that is correct.
  - Q. Pardon!
  - A. We would not.
- Q. So the only alternative is that the reallocation would have to be changed, is that correct?
  - A. That's correct.

Q. You have been telling us up to now about Boeing's policy, how they would have operated and so on.

Did Boeing, in fact, depart from the policies that you

have described?

A. You mean have we ever departed from them?

- Q. Did you? With respect to the ordering of the ITr. 32041 320s and 120s in 1955 and 1956, did Boeing depart from the policies you described?
  - A. No, sir, I don't believe so.
- Q. Mr. Connelly, I show you a copy of Defendants' Exhibit 95 in this action. One copy of Defendants' Exhibit 95 which has been marked 95B has been marked in evidence in this case.

Would you please look at it and tell me if you recognize it?

Do you recall it, Mr. Connelly?

- A. Yes, I recall it.
- Q. Was this Defendants' Exhibit 95B—and I can advise you Defendants' Exhibit 95B is a Chinese copy of the document you have in front of you except it is one that went to Mr. Damon if I recall rightly rather than Captain Rickenbacker—was this the first written announcement to the airline industry of Boeing's desire to enter into contracts for 707s?
  - A. Yes, to the best of my knowledge it was.
  - Q. Do you recall to what airlines it was sent? «
- A. I can't recall specifically, but I feel quite certain that it was sent to all the airlines we felt would have an interest in this airplane.
- Q. I can advise you that the documents produced [Tr. 3205] from Boeing's file showed that copies were sent in addition to the one to Eastern, which you have, to Pan American, American, United, Northwest and TWA, and

that a somewhat similar letter was sent on December 3, 1954 to BOAC.

Does that accord with your recollection?

- A. I can't recall specifically to whom it was sent, but that sounds reasonable:
- Q. I direct your attention, if I may, Mr. Connelly, to the portion of the letter beginning at the bottom of page 2 and going over to the end of that paragraph where it ends at the top of page 3.

Have you read it, Mr. Connelly!

- A. Yes.
- Q. Was that a statement that portion of Boeing's then intended policy with respect to deliveries to various airlines?
  - A. Yes, I would say it generally was.
  - Q. Let me see if I understand how this was to operate.

That the first customer would get preference, and the second customer would receive airplanes at the same rate as shown in the schedule attached, depending on quantity, but the first delivery to the second customer [Tr. 3206] would start three months after the first delivery to the first customer? Is that what was intended?

- A. That's what it says.
- Q. That is what I understood it to say but I was not sure.
  - A. Yes.
  - Q. I wanted to be perfectly certain.

The same with respect to the third customer, the second customer would have a three plane preference over him—three months preference, I mean?

- A. Yes.
- Q. In each of these instances, setting forth the quantity of initial order, there is no case, is there, where the deliveries in the first three months would exceed three planes!
  - A. That's correct according to this tabulation.

- Q. Was this policy on deliveries, in fact, adhered to by Boeing?
  - A. Well, in principle, but not as to specifics.
  - Q. Will you explain that, please?
  - A. Yes.

In the course of negotiations, we did commit in the case of Pan American to give them the first six airplanes. We had no specific provision in the American [Tr. 3207] agreement on priorities, but it was understood they would receive preferential treatment with respect to any other domestic airline.

As I recounted before in the TWA agreement, the provision was that we would not deliver more than 12 aircraft prior to the time that TWA received their first certificated airplane.

- Q. You mentioned there was preferential treatment to American. What was the extent of that? Was it not that American was to receive six certificated planes before TWA received its first certificated plane and before any other domestic airline received a certificated plane?
- A. As I said, there was no provision in the American agreement. And the way the schedules were arranged, this could have been either four or six airplanes, by reason of the fact that we don't commit on airplanes, we commit to deliver so many in a month.
- Q. Was there not a side agreement with American that they would receive six certificated planes before any other airline domestic received any?
- A. To my knowledge, there was no specific agreement in respect to a number of airplanes.

It worked out—it could have worked out, as I [Tr. 3208] say, as between four and six. So obviously we had to protect ourselves on the possibility it would be six.

### Connelly-Cross

- Q. Will you state the agreement with American as you recall it?
- A. There was no agreement in regard to preferential deliveries whatsoever.
  - Q. There was no agreement—
  - A. In the contract.
  - Q. I am not talking in the contract.
  - A. Well, I'm talking in the contract.
- Q. I am saying outside the contract. Dehors the contract, was there not an agreement with American whereby they were to receive a preference as to deliveries?
- A. It was understood that they would have preferential deliveries, yes.

[Tr. 3209] Q. Will you state what the understanding was, Mr. Connelly?

- A. I can't state it any more specifically than that because we weren't requested for a number of months or a number of airplanes. The statement was made we are a big airline, we expect to be treated accordingly, if you want to do business with us.
- Q. Did you make a commitment—and by "you" I mean the Boeing Company—
- A. Going back to this statement, the fact that we couldn't bring another customer in for three months pretty well answers the situation because our delivery situation was such that there was a possibility of six airplanes going to them at the end of three months.
- Q. But you scheduled only one airplane for each of the months, did you not, so that the second—
  - A. You mean that we contracted?
- Q. No, in the schedule attached to Defendants' Exhibit 95.
  - A. No, I'm departing from that.

# Connelly-Cross

I don't think that we can be held to this after we are in negotiation with a customer. This brings about changes. It is quite common in any business, I would think.

[Tr. 3210] Q. I am not criticizing the Boeing Company.

- A. I know you are not.
- Q. I am trying to get some facts, Mr. Connelly.
- A. We entered into agreements a year later than that and obviously some changes had come about.
- Q. That's right. And one of the changes was, was it not, that Boeing made a commitment to American that it would receive six certificated planes before any other airline would?
- A. I don't think any such statement was made to American Airlines until such time as the production schedule very definitely pointed out that would be the fact.
  - Q. What does that mean, Mr. Connelly?
- A. Well, when we were arriving very close to the delivery period and we can foresee with sincerity exactly what our delivery schedule is going to actually develop to be.
- Q. What was the commitment that was made to American?
- A. There was no specific commitment other than they would give—be given some preferential treatment.
- Q. Was that not defined in any way?
- A. To my knowledge, it was never defined.
- Tr. 32111 Q. But eventually they did get preferential treatment—
  - A. Yes.
  - Q. -is that correct?
  - A. That's right.
- Q. You said this is when your production got along. When was that?
  - A. Relatively close to the time of delivery.

### Connelly—Cross

Q. The first delivery to American of an uncertificated plane was in October 1958 and of a certificated plane in December 1958.

Does that help refresh your recollection?

A. I can't help you on a date that those discussions took place.

It was, I would say, several months prior to the time the airplanes were actually delivered.

- Q. Some time in 1958?
- A. Yes, it would be some time in 1958.
- Q. I show you, Mr. Connelly, an exhibit that has been marked in this case, Defendants' Exhibit 53, a transcript of a telephone conversation between you and Mr. Rummel on December 20, 1957, which Mr. Rummel identified as far as he could see as an accurate transcript of the conversation had with you.

[Tr. 3212] Would you like to look at it, please?

- A. It was this transcript taken by Mr. Rummel?
- Q. That is right.

The Witness: Offhand, I don't recognize it, but I don't have any reason to question what's here.

- Q. Would you read it, please? You only have to read down to the point I am going to ask you, the fourth comment I think on page 2.
  - A. How far do you want me to go down?

ITr. 32131 Q. Go as far as you please. So far as my question is concerned you only have to go to the fourth comment on page 2. I am not keeping you from reading the whole thing, if you want to, Mr. Connelly.

- A. All right.
- Q. Is it or is it not a fact that in this telephone conversation you advised Mr. Rummel that Boeing had to deliver

# Connelly-Cross

six certificated airplanes to American prior to the month in which Boeing would deliver any airplane to any other domestic customer?

- A. Yes, I apparently have said that.
- Q. And that that was an understanding that you had with American or a representation, rather, that was made to American by Boeing?
  - A. No, it wasn't an original representation.

As I said, there was no—that's the way it worked out in the production schedule, and we had protected ourselves either against four or six airplanes.

It turned out from a production standpoint, it was six airplanes.

- Q. You told us at the time that the production schedule where the production worked out so that it could produce six planes for them was a few months [Tr. 3214] before the first delivery and you said it was in 1958.
  - A. This is December 1957. Excuse the one-month delay.
- Q. This is one month. You said several months before the first delivery which was in October.
- A. Well, our first deliveries, production deliveries started much earlier than that to Pan American. We could foresee what our production schedule was going to produce.
- Q. Is it your testimony that at no time did Boeing make a representation to American that it would deliver six certificated planes to American prior to the delivery of any certificated plane to another domestic airline?
  - A. To my knowledge, never before this.
- Q. How long before this was it? By this we refer to December 1957?
- A. Well, at such time as we could see in our production schedule precisely what it was going to be or more precisely I should say what it was going to turn out to be.

## Connelly—Cross

Q. Do you want to amend the time when the product schedule gave you that information?

A. I can't amend the time because I can't recall wi it was.

ITr. 3215 Q. Is it your testimony as I understand that the representation made to American was not made the time the agreements were made?

A. Yes, sir, it was not made at that time.

Q. What was the reason for making the representative when it was made?

A. Because American Airlines were keenly interested what this was going to be.

Q. What was going to be?

A. What this priority was going to be.

Q. When did you advise them as to that priority, whit was going to be?

A. It was in about this time period. I can't be any more precise that that. At such time as we knew when our production schedule—what our production schedule was going to produce for us.

Q. How did you happen to fix on six planes?

A. Because there were six airplanes that would be deliered under our then target schedule.

Q. Could you not have equally or to some degree at least improved TWA's deliveries?

A. No, sir.

Q. Why not?

A. Because we cannot move the airplanes out of [T] 3216] their line positions.

And furthermore we had not represented to TWA the it would be any less than six airplanes.

Q. You had not what to TWA?

A. We had never represented to TWA it would be an less than six airplanes. There were—you get to this be

deduction. We said we would not deliver more than 12 prior to the month in which they received their first certificated airplane.

- Q. That's right, you did.
- A. That's right.

t

- Q. Did that tell them that American was going to get six of the twelve?
  - A. No, not in itself.
- Q. TWA was very much upset by the proposed delivery schedule, was it not?
  - A. So were Pan American and American.
- Q. Pan American still got its first six, didn't it? What upset them?
  - A. Well, they wanted twelve.
  - Q. After the contracts were signed I am talking about.
- A. Well, after the contracts were signed, there was not much to talk about at that point. The [Tr. 3217] negotiation had been concluded.
- Q. When did Boeing begin its production line, Mr. Connelly?

The Special Master: On the—Mr. Hayes: On the 120s.

- A. Oh, I think our design work started in the first part of 1955.
- Q. No, I mean production line itself. When did the planes actually begin to move down the production line?
- A. Well, it would have been about 30 months prior to delivery of the first airplane. There is a year certification in there. Lead time is approximately 18 months.
- Q. Do you recall when it was that planes began moving down?

A. No, I cannot. My statement is when parts are starting to be fabricated, not when a production line—final assembly would start roughly, oh, I'd say ten months prior to roll-out at the factory.

Q. The American contract was not finally signed until March, 1956, and the TWA contract was signed on March 2, 1956.

When you arranged your production line, wasn't ITr. 32181 it possible for Boeing not to put six American planes ahead of the TWA planes?

A. Well, at that time, I guess anything would be possible, but it would not be prudent for us in light of what we thought was a proper way to proceed.

Q. There was nothing to prevent Boeing from putting in three or four American planes ahead of the first TWA plane, was there?

A. Well, this isn't that simple, Mr. Hayes. There were a lot of certification things we had to do to the—additional certification work on the TWA planes even if we had moved them ahead. That wouldn't result in any earlier delivery of the airplanes to them.

Q. Even though they ordered a day after American!

A. It didn't make any difference when they ordered. I am talking about the production capability of doing it.

Q. So far as production capability is concerned, Mr. Connelly, was there some point in the production that a decision was made as to the order in which completed airplanes would come off the production line?

A. Yes.

Q. When was that?

A. Oh, it was a continuing process.

[Tr. 3219] Q. When did it start?

A. At the very inception of the program, and was constantly revised as we went down the line.

## Connelly-Cross

- Q. Was there any reason why since the contracts were actually signed only a day apart the production line could not have been by Boeing so arranged that American would not get six ahead of TWA?
  - A. Only at a great penalty to the Boeing Company.
  - Q. Would you explain that, please?
  - A. Yes.

I don't know whether you are familiar with a learning curve in a manufacturing operation or not, but—

- Q. Assume I am not.
- A. -we can't-all right. We assume that.

We cannot skip and jump from one configuration to another and achieve any improvement in our labor experience. And we have provided for that. That's the reason for that. That's the reason we quote deliveries on a monthly basis.

It gives us the right and the prerogative to build a certain number of airplanes of the same configuration simultaneously and in consecutive order.

- Q. Did you have to have six American airplanes [Tr. 3220] ahead of TWA?
- A. Apparently we determined that's what we should do, and we still fulfilled our contract commitments.
- Q. You determined that prior to the time TWA signed its contract, did you not?
  - A. Well, it could have been, yes.
- Q. Because you had the provision in the TWA contract that not more than twelve planes will be delivered to other carriers and you have identified the twelve planes as six for Pan American and six for American.

So that actually, is it not a fact that even when TWA signed the contract, Boeing knew, at least, that American was going to get six planes before TWA received its first?

A. No, four or six.

- Q. Then why the provision for twelve?
- A. Because it could be twelve.
- Q. But you knew-
- A. We obviously wouldn't protect ourselves for four if there was a good possibility it might be six.
- Q. As you go down the production line, after the first deliveries, you actually switch from one configuration to another, do you not?

(Tr. 3221) A. We do, but we attempt, again, to build as many in sequence as we can of the same configuration, within the contract flexibility we have.

Q. For example, the delivery schedule shows that after Pan American and American had received their preferences, in March there was one American plane, and two TWA. In April, there were two American and three TWA.

In May, there were four of each.

You switched back and fourth then, did you not, from one configuration to another?

- A. Yes, but you'll see they are fairly well a group. And in many cases we have to get some of these airplanes out on the field to accomplish the certification work that has to be done.
- Q. What do you mean they are fairly well grouped? Take May, for example, Mr. Connelly. American is May 4th, TWA May 10th, American May 12th, TWA May 13th, American May 21st, TWA May 24th and one each on May 28th.

Where is the grouping you are talking about? You alternated back and forth between the customers, did you not?

- A. Which one are you looking at?
- Q. The actual deliveries of the-

Tr. 3222 A. 1201

- Q. -120 series.
- A. You will notice a grouping under American Air-
  - Q. For the first planes, yes.
- A. No. Yes, for the first airplanes. And then we did deliver two to TWA—
  - Q. With one to American in between?
  - A. -in March. I am speaking of March now.
- Q. Yes. There was one to American in between the two to TWA.
  - A. Then there are four to TWA and two-
- Q. I think you will find it is three to TWA, Mr. Connelly, with American planes delivered in between.
  - A. In April?
  - Q. In April.
- A. Well, I don't know. My schedule shows four for TWA and two for American unless I am missing something here.
- Q. Mine shows three in Mr. Rummel's statement. Maybe the statement is not the same.
  - A. Then in May there is four for each.

But to answer your question generally within the flexibility we have within our contracts we try to [Tr. 3223] arrange our firing order as we call it at the factory to obtain the greatest efficiency we can and repetitive efforts is the best way to accomplish this from the labor standpoint.

- Q. What I am asking you is what the reason is if you are able to switch back and forth from one configuration to another in later stages you can't do it at the beginning after, say, two or three airplanes.
  - A. I'm missing the point.
  - Q. I will try again.

If you look at that delivery schedule on page 4 of the statement of improvement—and you said you had four in April?

A. I have four for TWA in April and two for American.

Q. Wait. There is something wrong. Our statements do not agree. There are only three, Mr. Connelly, to TWA, one, two, three.

A. I beg your pardon. I must have been looking out of

the upper lens of the glasses.

Q. You will note, Mr. Connelly, taking, say, Aprilfirst take March. There are three planes delivered to the two airlines. The first to TWA, the second to American, the third to TWA.

[Tr. 3224] Then in April there are five total delivered. The first to TWA, the second to American, the third to TWA, the fourth to American, the fifth to TWA.

Then in May, you find the same switching back and forth by dates. My question is if Boeing, the way it operated its production line could switch back and forth from one configuration to another, after it got started, why couldn't it do it early in the production line allowing say to take your previous figure three to a particuar configuration for each airline? Why couldn't it be done that way?

A. Well, in the first place, this doesn't indicate factory sequence. This is sequence of deliveries.

Q. I understand that.

A. Well, I know, but they don't go out of the factory necessarily in this order.

Q. Why couldn't Boeing have arranged that deliveries go out of the factory in a sequence whereby the deliveries could be alternated? What is so difficult about it?

A. I'm not saying it couldn't be done, but from a manufacturing standpoint, an engineering standpoint, this is the way it was arranged. And again, this is not the factory sequence. The factory sequence could be [Tr. 3225] an entirely different thing than this.

Q. This is the delivery sequence?

This is delivery. There is a long period between roll-out at the factory and the delivery of the airplane.

- Q. All of these planes we are talking about here in March, April and May are all certificated planes, aren't they?
- A. Yes, but we had had a lot of difficulty with the air conditioning system and a lot of these airplanes were stacked up on the field for TWA and had to be completed on the field.

So, I don't—I don't think we can say you can shift things around in the factory, nor can we necessarily shift people around in the field to accomplish that particular objective which you are—I believe is your point.

Q. Is the sum and substance of what you are saying with respect to these six deliveries to American before TWA got any that it just happened that way, there was no agreement of any kind?

A. It was not the matter of an agreement, no, sir.

Q. When I say agreement, I don't mean a written agreement.

[Tr. 3226] A. No.

Q. I know it is not in a written contract.

A. That's right. And it is not a written—it is not an oral agreement.

Q. It just happened that way!

A. It happened because the schedules were laid out that way, yes.

And there were other factors entering into it as I pointed out, and these were significant, where the problems we had with the TWA airplane on the air conditioning system held those airplanes up on the field for quite some time and could very well have been—account for the crisscrossing of the airplanes as indicated on this sheet.

Q. So it was really TWA's fault because of the particular air conditioning system it wanted?

A. No, I didn't say it's anyone's fault. It's one of those things that happened.

Q. But that was one of the causes, if not the chief cause, that TWA wanted a particular air conditioning system?

A. Yes.

Tr. 32313 • • • The Special Master: Mr. Connelly, I understood, I think, from your testimony that the first orders came in for the 120s around October or November of 1955.

The Witness: As best I can recall, that is correct. The Special Master: Also, that you testified that as of that time, you reserved, at least in your own minds, some delivery positions for airlines other ITr. 32321 than those that ordered first?

The Witness: That is correct.

The Special Master: But that you had no records that would show exactly what it was at that time. Of course, they changed from time to time.

The Witness: They changed constantly.

The Special Master: Could you recollect how many positions you kept open—let us stick to the 120s for the minute—for airlines other than Pan American and American?

The Witness: This would refer to the early period?

The Special Master: Yes, right at the time you got those first two orders.

The Witness: No. I meant deliveries over, say, the first six or eight months, in that order.

The Special Master: Yes.

The Witness: Because you eventually get

# Connelly-Cross

The Special Master: I understand.

The Witness: There are lots of open positions. I can't be precise on this at all. I just have to draw on memory, as best I can. It will be general.

ITr. 3233 I would say that we had at least onethird of our production capability through the first

eight months available for other customers.

The Special Master: Were those vacant positions, if you want to call them that, at the time assigned to specific airlines which you thought were the most likely customers to come along next?

The Witness: From time to time, this is true, yes.
The Special Master: Did you consider Hughes
Tool and TWA as separate customers, separate
prospective customers?

The Witness: No.

The Special Master: Not at any time?

The Witness: We considered that they were one and the same.

The Special Master: Did your contracts contain a provision—and this may be in the record already—as you recall it, that prohibited an airline or restricted it in any way from reselling the planes?

The Witness: Yes, we had a clause in our contract that prevented the sale of those aircraft or transfer, with certain exceptions, which had to ITr. 32341 do with financing, without our consent at any time prior to the delivery of the airplanes.

The Special Master: At any time prior to the delivery of the airplane?

The Witness: That's right.

The Special Master: Then after title passed, of course they were free to do—

The Witness: After title passed, we had no control.

The Special Master: Would that have prevented the customer, before title passed, from selling its delivery position as distinguished from the plane!

The Witness: There would have been no delivery positions, unless they had contracted for airplanes. We did not sell positions.

The Special Master: You did not sell positions? The Witness: No. sir.

The Special Master: Can you recall any discussions you had with Hughes Tool representatives about a particular clause in there which said they could assign to TWA, without consent from Boeing! Were you in on any discussions that refreshes your [Tr. 3235] recollection as to how that particular provision in the contract came into being!

The Witness: Well, my recollection is that there was a specific provision in the Hughes Tool agreements that provided that they could transfer those aircraft to TWA. That would be in the record, in the contract itself, if what I said is correct.

The Special Master: Do you remember any discussion leading up to the formulation of that clause in which you participated?

The Witness: There was no extended discussion because we had assumed from the start that this would be the case.

The Special Master: How long do you recall did you reserve positions—the 120s still—for Hughes Tool, early deliveries, after the signing of the Pan American and American contracts? When would you say that they lost their early delivery positions that Hughes Tool did?

# Connelly-Cross

The Witness: We had never designated a specific customer in respect to position. We had reserve—we were reserving for the major trunk lines. We were very anxious to get Eastern Airlines.

[Tr. 3236] And in the final answer, I believe, as best I can recollect, the positions we did quote to Hughes Tool Company was a residue of positions that occurred after final decisions had been made by certain key airlines such as United and Eastern Airlines, and these positions became available.

The Special Master: Really, what I am trying to get at here, so there won't be any mystery about it, is Hughes Tool did not order when American and Pan American did, say, in October of 1955? They did order some when—in March 1956?

The Witness: Well, may I say—

The Special Master: Did they lose any delivery position by that delay of six months or so?

The Witness: They lost delivery positions, in my opinion, by not moving as early as October of 1955.

The first definite interest that was manifested by Hughes Tool in buying Boeing airplanes occurred—well, it was between Christmas and New Year's, I remember that. At least we met for negotiation during that period. That was between Christmas and New Year's of 1955.

The Special Master: What happened during ITr. 32371 the interval—if you had a third of your positions left open—what happened during that six months' interval that would have meant that Hughes Tool would lose out on early delivery positions? Did some other airline come in and express a definite interest so that you more or less allocated some of your vacant positions to them?

### Connelly-Cross

The Witness: Well, Hughes Tool had not indicated any interest up until the time I just mentioned, definite interest, and we were quoting these positions to any number of customers. Eastern Airlines, for one. I recall that. Certain foreign airlines.

Did I answer your question?

The Special Master: In part. And perhaps as much as you can, considering the lapse of time since this all happened.

But would you say that if Hughes Tool had ordered, for example, on New Year's Day 1956, that they would have got as good delivery positions as if they had ordered the same date that Pan American did?

The Witness: January 1, 1956?

The Special Master: Yes.

[Tr. 3238] The Witness: If you mean by "order," had they expressed the interest they wanted to move forward and sit down and negotiate a contract and specification—

The Special Master: Yes.

The Witness: (continuing) —no, because the others were at least four or five months ahead of it.

The Special Master: They had come in before New Year's Day?

The Witness: They had come in before that time.

The Special Master: That's what I was trying to get straight in my mind.

Now, if we can turn for a minute to the 320s, did you have roughly the same procedure there, that about a third of the positions, early delivery positions were left open as a matter of policy when the first orders came in for the intercontinental plane?

## Connelly-Cross

The Witness: Well, we quoted all of our positions to as many of the major customers as our schedule would permit us to. We did not reserve positions for anyone. We quoted everything we had [Tr. 3239] available.

The Special Master: You did not reserve them to specific people, reserve a number of delivery positions, as I understand, for whoever did come in?

The Witness: Well, we actually quoted positions to a number of customers.

The Special Master: Who did you quote to on the 320?

The Witness: Well, we quoted to Pan American, I believe we quoted to TWA, we quoted to BOAC, Sabena, Air France, SAS, KLM, all the major so-called international carriers.

The Special Master: Did any of them come in before Hughes Tool came in with the result that Hughes Tool lost delivery positions before they actually came in, any of those foreign airlines?

The Witness: Yes. Pan American came in. And we actually had been in negotiations with the foreign carriers, and here again I think I stated before the managements of those companies cannot commit without government approval.

So, in our discussions later with Mr. Hughes, it was pointed out—when he wanted to know how many [Tr. 3240] positions we had open through June 1960, we told him how many had been sold or firmly committed for, and how many outstanding firm proposals we had at that time, which had not expired. And so by that means, Mr. Hughes was aware of what was open through that period of time.

So these things had to precede that particular action.

The Special Master: Is it your testimony, then, that the delay by Hughes Tool in ordering from the time that Pan American first got early delivery positions, to the time that Hughes Tool actually put in its order, did result in Hughes Tool getting later delivery positions?

The Witness: Yes, I would have to conclude that. The Special Master: That is all I have now.

# Examination (cont'd) by Mr. Hayes:

Q. To continue for a moment along the line that the Special Master quizzed you, Mr. Connelly, you mentioned that the contract was made in October. Didn't you testify yesterday that the delivery positions to Pan American, for example, were fixed in mid-1955 substantially?

(Tr. 3241) A. I have tried to make clear, Mr. Hayes, that we don't go on the basis of when something is signed.

- Q. That is correct. The contract was signed with Pan American in October of 1955; right?
- A. Yes, and they had been working with us long in advance of that.
- Q. That is right. When was the date that you made a commitment to them of the first six planes?
  - A. I can't remember the time.
  - Q. It was prior to October 1955?
  - A. Prior to that time, yes.
  - Q. A matter of months prior to that time, was it not?
- A. No, not too long in advance of that, because here, again, we had the problem of an operator who wanted a much larger number of airplanes before anyone else could receive an airplane, and it was a matter of negotiation.

- . Who was that operator?
- . Pan American.
- . What number of planes did they want before any yelse received any?
- . Well, this was related to the size of their order as saw it. I think it was somewhere in the [Tr. 3242] or of 12.
- Might it have been 25?
- No.

Didn't you testify, in substance yesterday, that—ou just said now, it is not the signing of the formal contract that was important, but that if you made a committe to an airline on delivery positions and they continued egotiate in good faith, you would not assign those very positions to another air carrier who came along even was prepared to sign the contract?

This was true, except in certain cases where we had ed the same positions to, say, two carriers, with the osal specifically setting forth they were subject to prior and we would have advised them that there were other omers whose positions were being quoted to.

Take Pan American. Had you not made a committo Pan American of delivery positions prior to the of the signing of the contract?

Oh, yes, definitely.

If another carrier came along between the time you the commitment and the time Pan American signed contract, would you have given to that other carrier elivery positions you quoted to Pan American?

7. 32431 A. No.

You would not?

Because those positions were quoted firm, because had evidenced their sincere interest in the airplane

## Connelly-Cross

and wanted to proceed to negotiate a contract and specification.

- Q. Can you search your recollection and tell us when it was you made specific commitments to Pan American as to early deliveries, before deliveries to other airlines?
- A. Well, this was in the course of negotiations preceding the October date, the signing of the contract.
  - Q. That is right.
  - A. But I can't tell you what the time was.
  - Q. You can't tell me how long before it was?
  - A. No, I cannot.

The Special Master: Is that true both as to the 120s and the 320s, those dates?

The Witness: In the case of the 320s, this was a relatively short negotiation. That was a part of the negotiations at that time, yes. I mean, it would be immediately preceding the signing of a letter contract.

# [Tr. 3244] By Mr. Hayes:

- Q. That you made the commitment to Pan American!
- A. That's correct.
- Q. You also said in response to a question by the Special Master that at the time you made the Pan American contract—and I think the question also included the American contract, if I remember rightly—
  - A. So these are the 120s?
- Q. That's right. (continuing)—that you had opened approximately one-third of your delivery positions during the first eight months; do you recall that?
  - A. Yes.
- Q. Where were those delivery positions? Do you mean one-third for each month?

# Connelly-Cross

- A. No, they were succeeding in successive order in respect to our ability to introduce new customers.
- Q. Do you mean this—let me just take the suppositious figures—that in the first eight months you expected to be able to produce, let us say, 40 planes—just take that as a figure—you made a commitment to Pan American that they would get the first six, did you not?
  - A. Correct.
- Q. And your commitment to American was what? How [Tr. 3245] many would they get before any other domestic airline?
- A. At that time, there was no commitment to the American Airlines, except it was understood they would have some priority.
- Q. So the 120 delivery positions that you are referring to are one-third of the remaining positions after the six to Pan American and after whatever early positions American would get?
  - A. No. that's not correct.
  - Q. What is it then? Explain what you mean.
- A. Well, I am taking the full schedule for Pan American and American for the eight months.
  - Q. That's what I am talking about.
- A. No, you had-I did not understand it that way. I thought you were referring only to the first airplanes.
- Q. No. I said assume you could produce a total of 40 planes in the first eight months. You had committed the first six to Pan American. So there were no delivery positions open among the first six that you reserved for anybody !
  - A. Right.
  - Q. You had a commitment of some kind to American-
  - A. Right.

- Q. (continuing) —the details of which were, let us [Tr. 3246] say, up in the air as to number. It turned out to be six, but let us say it was up in the air at the time. I think your testimony yesterday was it might be four or six. The first ten to twelve planes would go to Pan American and American, would they not?
  - A. Right.
- Q. So that when you speak of one-third of your delivery positions for the first eight months being open, are you not referring to one-third of the remaining delivery positions, to wit, 10 or 12 subtracted from 40?
- A. Of course, the one-third was pulled out of the sky as being a figure.
- Q. You take any fraction you please, Mr. Connelly. I don't care what fraction it is.
- A. Well, anyone could. I can't remember any specific quantity. I was taking our production for the first eight months, and as best as I could recollect, somewhere in the neighborhood of one-third were available for other customers.
- Q. That was one-third of the positions after Pan American got six and American got four to six, was it not?
- A. It could be interpreted that way. I didn't construct it on that basis.
- [Tr. 3247] Q. Were any of the first ten positions open to any carrier other than Pan American and American?
  - A. No.
  - Q. None?

Mr. Sonnett: At what time?

Mr. Hayes: At the time the Pan American and American contracts were made or the commitments were made, not necessarily the signing of the commitments.

A. You mean after the commitments were made!

## Connelly-Cross

Q. After the commitments were made.

A. Well, my question was more directed to more a period, to a time we had any commitments other—no, considering only those two commitments.

But I am trying to look at it from a production standpoint rather than from a contract commitment standpoint.

- Q. The Special Master's question to you was the number of open positions after Pan American and American had committed.
- A. Let's take 40 and subtract 12. That's the answer then.
  - Q. It is one-third of the remainder that were open?

A. Okay, fine.

ITr. 3248] Q. Last evening at the time of adjournment it was suggested, I believe, by the Special Master, that you might review the transcript of the telephone conversation between Mr. Rummel and yourself and advise us if there was anything you wanted to add to your testimony.

A. No, I have nothing. This is a matter of the record,

is it not?

The Special Master: It is in the record.

Q. Yes, sir, it is in the record.

A. Then it speaks for itself.

Q. Did I understand you to testify yesterday, Mr. Connelly, that there were no negotiations of any kind between Boeing and Mr. Damon with respect to the jets?

A. Not to my knowledge.

Q. You did not so testify?

A. Well, to my knowledge there were no negotiations with Mr. Damon.

Q. Would you look, please, at page 5 of the transcript of the conversation between Mr. Rummel and yourself, about the middle of the page?

# Connelly-Cross

Have you read this last evening, by the way?

A. Yes.

Q. Mr. Rummel said, "Well, we had—that's right. ITr. 32491 And we had—I can recall an agreement with Damon way back before—practically before it existed—Wellwood, Beall and—see who else was it—myself—were you there? I don't believe you were.

"Mr. Connelly: No.

"Mr. Rummel: To the effect that you would not close with anyone else without first giving us the opportunity for a—on an equal basis.

"Mr. Connelly: Well, it's my understanding that

that offer was made.

"Mr. Rummel: Oh, I don't think so. Whose was it made to?

"Mr. Connelly: Well, there have been several telephone—

"Mr. Rummel: I don't think so. The first thing I knew that American had bought was when I read it in the newspapers. It sure wasn't made to me.

"Mr. Connelly: Bob, I'll have to back off a little bit on that except that in talking to Ed Wells and Wellwood," and so on.

I can't make out what the rest of it is.

Mr. Sonnett: It is hard to read that one but I think the photostat is better.

[Tr. 3250] Do you want him to read from the photostat?

Off the record.

The Special Master: Off the record.

(Discussion off the record.)

"Mr. Rummel: Well I—of course I can't either. I mean I can't know exactly all the details of what went

# Connelly-Cross

on between Howard and your people at that time, but to my knowledge the thing was left where it was left in San Francisco.

"However, that was a long time ago but I'm merely pointing out that there are plenty of background discussions which I am sure Howard is not referring to right now because this ran to Damon.

"Mr. Connelly: Yeh.

"Mr. Rummel: Although I think he'd probably been apprised of it, but I don't understand—I know we pressed throughout the field for information on relative positions in detail and all that Boeing would speak of was vague generalities. But with assurance. "Mr. Connelly: Bob, I can't agree with that."

My question really is in response to one of Mr. Rummel's remarks, you stated, Mr. Connelly, that it [Tr. 3251] was your understanding that an offer was made. It is on page 5.

A. Well, Mr. Hayes, I testified yesterday, and this I pointed out was hearsay—certain things were reported to me—discussions had been held between Mr. Beall—

Q. Mr. who?

A. Mr. Beall and I believe these were with Mr. Hughes. They may have been with Mr. Damon. I don't know.

But his report to me was that the interest of the Hughes Tool Company or TWA, was only there in the event they got a large block of the first airplanes.

Q. Was it also reported to you that-

A. I think, if I may continue—

Q. I'm sorry. I thought you finished.

A. —if there was an offer made, I'm sure it was one that would hold out, that we were anxious to do business with them, and we would offer delivery positions on as equal a basis with others as it was possible for us to do so.

# Connelly-Cross

Q. Under the then circumstances, whatever they might

A. Well, those circumstances don't differ. I ITr. 32521 don't understand what you mean.

Q. You already made a commitment to Pan American before you made any agreement with American, hadn't you

A. This goes back long before that, before we even had

a program.

- Q. I understand that. What I am trying to find out is this: Were you aware, was it a fact so far as you know, that there was an agreement between someone in Boeing and Mr. Damon that you would not close with anyone else without first giving TWA an opportunity on an equal basis?
- A. I can't recall that statement ever having been made to me.

Q. You don't recall it?

A. No, sir.

ITr. 32531 • • • Q. This is the letter you may remember about which I asked a few questions yesterday, Mr. Connelly. The ITr. 32541 one you have is addressed to whom, Mr. Rickenbacker, is it?

A. This would have been to Rickenbacker, yes.

Q. It was brought out yesterday that identical letters went at the same date to Pan American, American, United. Northwest and TWA.

What responses did Boeing receive from the letters it sent to those airlines?

A. There were—I can't recall distinctly what reactions, we had.

Q. Of the airlines to which they were sent, which evidenced interest in negotiating with Boeing?

## Connelly-Cross

A. I'd say the majority were interested in taking a look at what we had to show them. This didn't necessarily mean they were interested in starting negotiation.

Q. Did all of the airlines get in touch with Boeing in response to Defendants' Exhibit 95?

A. I can't say whether all of them did or not, Mr. Hayes.

Q. Did Pan American?

A. Pan American very definitely had been working in this area. They were very interested in jet transport.

[Tr. 3255] Q. What about American A. American was interested also.

Q. Did they start conversations with Boeing?

A. They were interested in coming out and flying in the prototype, getting the feel for what this airplane was.

Q. Did United?

A. United also.

Q. Did Northwest?

A. Any action on the part of Northwest would have been at some later time.

Q. How about Eastern?

A. Eastern were interested.

Q. How about TWA?

A. I don't know what response, if any, we had from TWA.

Q. Did anybody representing the Tool Company or TWA so far as you know, communicate with Boeing shortly after Defendants' Exhibit 95, the date of it?

A. I can't remember whether they did or not.

Q. Who is Ken Gordon of the Boeing Company?

A. Ken Gordon-

Q. Or who was he then?

A. —at that time was one of our sales engineers.

# Connelly-Cross

[Tr. 3256] Q. Who was Bill Taylor?

- A. He likewise was one of our sales engineers.
- Q. Who was George Schairer?
- A. He was one of our research and development engineers.
- Q. Did Pan American by early January indicate to Boeing that it was interested in purchasing 25 jets?
- A. My only answer to that, Mr. Hayes, is Pan American showed a very marked interest in the airplane from the very first time we had the prototype program under way. And I can't remember any specific dates.
- Q. Did Pan American by that early date—I am speaking now prior to mid-January of 1955—or Mr. Juan Trippe on its behalf insist that Boeing deliver the first 25 airplanes to Pan American?
- A. At that particular time during the prototype period I am speaking about now I don't think they reached the point that they knew enough about the airplane to know whether or not they wanted to buy it.
- Q. Can you answer the question more specifically than that?
  - A. No, I don't believe I can.
- Q. By that date, did TWA desire the first 15 jet aircraft to be manufactured by Boeing?

[Tr. 3257] A. By what date, Mr. Hayes?

- Q. Prior to the middle of January 1955.
- A. Would you repeat the whole question, please?
- Q. Yes.

By that time had TWA indicated to Boeing that it wanted delivery of the first 15 aircraft to be manufactured?

- A. If so, it was never reported to me.
- Q. You have no knowledge one way or the other!
- A. No, I have not.

# Connelly-Cross

- Q. Do you know whether Boeing hesitated to agree to sell the first 25 to Pan American for fear it would lose TWA's potential order for 15?
- A. I don't know whether this ever occurred but I can answer it this way: We wouldn't offer the first 25 airplanes to anyone.
- Q. I did not say you did.
- A. I say we would not have.
- Q. No, I did not say you would have.

My question was whether Boeing was reluctant to sell the first 25 to Pan American because of its fear it would lose TWA's potential order for 15.

A. I can't answer that question yes or no. I don't think the question of fear of losing TWA would [Tr. 3258] ever enter into that decision.

The decision is we would not sell the first 25 airplanes to any one customer.

- Q. Do you have a recollection that Pan American ever asked for the first 25 deliveries?
- A. I have no recollection of it.

Mr. Hayes: Would you let the witness have, please, Defendants' Exhibit 10?

- Q. This is a memorandum from Mr. Rummel to Mr. Collings whom you know, I suppose, to be with TWA-
- A. Yes.

Q. —with a copy to Mr. Damon dated January 12, 1955.

You may read the whole memorandum and I am paricularly interested in the last paragraph and my questions o you will be based on the last paragraph.

I ask when having read it, you can tell us it refreshes our recollection.

A I have read it.

# Connelly-Cross

- Q. Does it refresh your recollection in any way?
- A. Not at all.
- Q. You were not present at this meeting between Mr. Rummel on the one hand and Messrs. Gordon and Taylor and Schairer on the other?

[Tr. 3259] A. No, sir.

- Q. None of them ever reported to you as to what happened?
  - A. No.
- Q. I show you, Mr. Connelly, a copy of Defendants' Exhibit 96 for identification, a copy of a letter from Mr. Allen to Pan American, dated June 23, 1955, with a copy to yourself.

Do you recall if this was the first specific offer made by Boeing to Pan American?

- A. I believe this is probably the first written proposal that was made, yes.
  - Q. Had there been any oral proposals prior to that date!
  - A. Not to my knowledge.
- Q. Had Boeing discussed delivery positions with Pan American prior to the date of Defendants' Exhibit 96 for identification?
- A. Well, undoubtedly this was the case, but I—I have no recollection.
- Q. Were you a party to such discussions with Pan American?
  - A. No, sir.
- Q. The aircraft referred to here is the 120 series, ITr. 32601 is it not?
  - A. That's right.
- Q. You will notice on page 3 on the delivery schedule, Boeing stated that at least eight aircraft would be delivered to Pan American before any will be delivered to any other commercial customer.

# Connelly-Cross

Do you see that?

A. Yes.

Q. Was that as a result of conversations, do you know, or was this a unilateral decision by Boeing?

A. Well, obviously not having been a party to it, I can't say anything more than my own opinion. It probably was

preceded by some discussion.

- Q. Were there meetings of the headquarters group that you have identified which was then handling all negotiations with airlines as to what offer should be made to Pan American with respect to delivery positions?
  - A. Not to my knowledge.
- Q. Was this a decision so far as you know, entirely by Mr. Allen?
- A. It could have been. I presume he probably talked to some of the people in the company about it.

He may have discussed it with Mr. Beall. I don't know. [Tr. 3261] Q. Who handled the Pan American negotia-

tions for Boeing?

- A. Well, the final negotiations were conducted by Mr. Allen for the first few days, I was in attendance, Mr. Mickelwait of our law firm, and we had several of our technical people there.
- Q. When you say the final negotiations, what negotiations are you talking about?
  - A. Discussions to effect a definitive contract.
- Q. No, I am talking about the negotiations which preceded the date of Defendants' Exhibit 96 for identification, the negotiations prior to June 1955.

Who was handling negotiations with Pan American prior to that date?

A. We had any number of technical people working with the technical people of Pan American. Some of our sales engineers undoubtedly were there.

## Connelly—Cross

There probably were discussions between Pan American management, our very top management.

This is all supposition. I don't know.

- Q. You can't tell us who under the setup in Boeing at that time would have the responsibility for making offers with respect to delivery positions?
- A. I will never question our president's authority ITr. 32621 to do that, no.
  - Q. Did anybody else have the authority?
- A. I doubt anyone would without at least a discussion with Mr. Allen at that particular time.
- Q. Certainly the engineers would not have that authority, would they?
  - A. No. Nor would the sales engineers.
- Q. Who, so far as you know, handled the negotiations on behalf of Pan American with respect to delivery positions I am thinking now.
- Q. Will you proceed and answer the question, Mr. Connelly?
  - A. Will you repeat it, please?
- Q. Who, so far as you know, handled the negotiations on behalf of Pan American with respect to delivery IT. 3263 positions?
  - A. With respect to delivery positions?
  - Q. Yes.
- A. I don't know, but I would assume Mr. Trippe and Mr. Gledhill.
  - Q. Again you were not party to those discussions?
  - A. No, sir.
- Q. Prior to June 23, 1955, Boeing had also been negotiating, had it not, with a fair degree of activity, with both American and United?

A. According to my recollection, I doubt if you would use the word negotiating, but there were contacts constantly with all the airlines between our technical people and our—and their counterparts in the airlines.

Q. Were there conversations going on at the execu-ITr. 32641 tive levels between your executives, Boeing's executives and the executives of American and United?

A. I can't answer definitely yes, but I would assume there had been discussions relative to the airplane between top officials of the airlines and our top management.

Q. Also with respect to delivery positions?

A. It would only be an assumption, sir. I don't know.

Q. I thought you testified yesterday in substance, and correct me if my recollection is wrong, Mr. Connelly, that Boeing worked actively throughout this period, early 1955 and the middle of 1955 with Pan American, American and United, trying to work out detailed specifications looking towards orders.

A. Detailed specifications, that is correct.

Q. That is true of all three of the Airlines, Pan American, American and United, is it not?

A. Well, I can't be positive as to that time period, but we were working with those three airlines on detailed specifications for the airplane.

ITr. 3265] Q. I show you, Mr. Connelly, Defendants' Exhibits 97 and 98 for identification, letters dated June 24, 1955, one day after the letter to Pan American which we have just been discussing, addressed respectively to American and United Airlines.

I ask you if after reading them you can tell me whether these were the first offers made to those two airlines for the 120 series.

A. These were one day after, Mr. Hayes, the other one?

Q. Yes, one day.

A. I would have to give the same answer. To the best of my knowledge and belief these were the first written offers made to these airlines.

- Q. You are in no position to testify as I understand it for lack of knowledge as to what conversations with respect to deliveries may have taken place between Boeing and either United or American prior to dates of Defendants' Exhibits 97 and 98 for identification?
  - A. The references are these two documents?

Q. That is right.

A. I was not privy to any such conversations, and I am not aware of what they might have been, or if [Tr. 3260] there were any, but I assume there were.

Q. You will notice on page 3 of these two letters, Defendants' Exhibits 97 and 98 for identification under the heading "Delivery" proposed identical schedules with a commitment that Boeing would not agree to deliver the Model 707-120 series which we know it is to any other customer engaged in commercial air transport within the United States earlier than such aircraft will be delivered to American or United as the case might be.

Do you see that?

- A. I believe you said not agree. You mean agree not to.
- Q. Would agree not to. I'm sorry.

A. Right.

Q. You see that, do you not, Mr. Connelly?

A. Yes, I see that.

Q. Do you know whether or not a letter similar to the letters to American and United were sent to TWA?

A. Do I-repeat that, please.

Q. Do you know whether or not a letter similar to the letters to American and United were sent to TWA?

## Connelly-Cross

Mr. Sonnett: I take it you are including in TWA Hughes Tool Company or Howard [Tr. 3267] Hughes?

Mr. Hayes: Either or both.

A. I don't know, but I believe not for the simple reason that it was very definitely understood that there was no interest on the part of the Hughes Tool Company or TWA mless they could get a large block of the first airplanes.

Q. You did not consider eight airplanes to Pan American to be a large block?

A. Well, it is less than 50, 40 or 33.

Q. It is less than 15, too, isn't it?

The Special Master: The Court will take judicial notice of that.

A. I believe that's right.

Mr. Sonnett: While we are at the numbers here, 50, 40, 33, I am not clear the significance of that is apparent on this record, 50, 40, 33.

Mr. Hayes: If it is not, it is not.

- Q. Did you personally engage in the negotiations with TWA or the Tool Company?
  - A. Yes.
  - Q. At what point?
  - A. Between Christmas and New Year's 1955.
  - Q. Prior to that time, did you?

(Tr. 3268) A. No.

Q. So any knowledge you have as to any demands of TWA or the Tool Company would be the sheerest hearsay, would it not?

## Connelly-Cross

Mr. Sonnett: I don't know how sheer hearsay is. Mr. Hayes: Hearsay, put it that way. Strike out the sheerest.

A. Only as reported to me, Mr. Hayes.

Q. You are not confident that everything that was said was reported to you, are you?

A. No.

Q. Did you consider that the offer to Pan American on June 23, 1955, of the 120 series was a guarantee that they would get the first eight airplanes, and offers the very next day to United and American with a guarantee only that deliveries would not be made to other domestic airlines in advance of the dates set forth in the offers, was in accordance with the Boeing policies you have described?

A. In light of the circumstances, yes.

Q. In light of what circumstances?

A. The lack of interest on the part of Hughes Tool or TWA in the airplane unless they do get a large [Tr. 3269] initial block of airplanes.

Mr. Hayes: Could I have the question repeated, please, to Mr. Connelly?

I am afraid you did not get the question.
The Witness: Did I go out of bounds?
Mr. Sonnett: No, I don't think you did.

Mr. Hayes: No, you made a speech about Hughes Tool Company so you are in bounds. That is the only rule according to Mr. Sonnett.

The Witness: I am sorry.

Mr. Sonnett: I thought Hughes was the defendant in this litigation.

Mr. Hayes: That was not the question.

The Witness: Would you repeat it, please!

Mr. Hayes: I will repeat it to you. It is easier than having the reporter look for it.

- Q. Did you consider that an offer to Pan American of the first eight 120s and offers the next day to both United and American were the only limitation being that no better delivery positions would be offered other domestic carriers to be consistent with the Boeing policies that you described yesterday?
  - A. Yes, I do.
- Q. How do you reconcile the preference of Pan ITr. 3270 American for the first eight with the Boeing policies that you described yesterday of equal treatment for all?
- A. Well, here again we must refer to the competitive picture. Pan American is an overseas operator.
  - Q. Is that your only reason?
- A. In respect to Pan American, that is the primary reason, yes.
  - Q. Is it the only reason?
  - A. All right, it is the only reason.
- Q. Were United and American just as interested in getting 120s as Pan American?
- A. Interested, but as long as Pan American was not competing with them, their primary concern was with those operators they would be competing with.
- Q. Did they tell you that or is that a bit of reasoning on your part. Mr. Connelly?
- A. It has been reported to me that certain comments along that line had been made, yes.
- Q. This is again hearsay that you received, is that correct?
  - A. Yes.
- Q. Do you know whether United or American were advised at or about June 24, 1955, that the first [Tr. 3271] eight aircraft had been offered to Pan American?

A. I have no knowledge of that, whether it waswhether that statement was made or not.

Q. Was any announcement made to the trade that the first eight aircraft were offered to Pan American?

A. No, sir.

Q. Was this treated as an internal secret in Boeing a between Boeing and Pan American, this offer of the first eight?

A. It is not a secret. We don't practice making a public statement as to our offer.

Q. I notice on the top of each page of Defendants' Exhibits 97 and 98—it is also true on Defendants' Exhibit 96—the word "limited" appears.

What does that indicate to you, Mr. Connelly?

A. In this case, it is limited in respect to only the people who are designated here would get copies of this memorandum.

Q. Its distribution within Boeing was limited to the individuals named, is that what it means?

A. That's correct.

I would like to elaborate on that a little bit. It is a large organization. We have standard distribution lists. And should we, for instance, use [Tr. 3272] Distribution List A. this would go out to the many people who have no connection with that particular job. So we use the term limited when it is to be restricted to the people to whom copies are sent.

Q. It is expected they will not disclose it to anyone else!

A. Only to those who have a need to know.

Q. There is always the danger that if others know, it might become public knowledge; is there not?

A. That's correct.

Q. When did United get a certificate to fly to Hawaii, Mr. Connelly, do you know?

A. I don't recall.

# Connelly-Cross

- Q. Do you know whether they were flying to Hawaii or planned to fly to Hawaii using jets!
  - A. Would you repeat that, please?
- Q. Do you know whether they planned to use jets on flights to Hawaii ?
  - A. I didn't know that, but I assumed they would.
- Q. Do you know whether they were flying to Hawaii at or about the time offers were made?
- A. Yes, they were, because they had used stratocruisers on that flight at one time, yes.
- Q. Pan American was flying to Hawaii too at that ITr. 32731 time, was it not?
  - A. That's correct.
- Q. What happens to your competitive posture picture? You had United and Pan American competing on flights to Hawaii?
- A. Well, that's a small segment if you compare it with the total picture.
  - Q. The fact is they were competitors, were they not?
  - A. On that route, yes.
  - Q. On that route, yes.
  - A. Yes.
  - Q. And planning to use the same planes on that route?
  - A. We would assume that.
- Q. But nonetheless Pan American received the preference over United?
  - A. That's in the record.
- Q. That is right. You said before that the only justification for giving Pan American preference was the competitive situation.

What happens now to that reason?

A. I still think it is a sound one.

ITr. 32741 • • • Q. The offer to Pan American was extended from time to time, was it not, Mr. Connelly!

A. I don't specifically recall, but it could have been as long as we were in serious negotiation.

Q. You will note on the last page of Defendants' Exhibit 96 in evidence under the term of the offer that it was to remain firm until July 18, 1955.

By that time, Pan American had not made a commitment,

A. By July 1955. As I recall, no.

Q. By the time you sent this letter of June 23rd, Defendants' Exhibit 96, you intended to keep it open until at least July 18th, or any date to which it might be extended and would not give those delivery positions to any other carrier; isn't that a fact?

A. That's right.

Mr. Hayes: I ask that there be marked for identification as Defendants' Exhibit 154 a telegram to Boeing Airplane Company from Franklin [Tr. 3275] Gledhill dated August 22, 1955.

- Q. It bears your initials at the top, I notice, Mr. Connelly.
  - A. That's right. I have read it.

Q. Was this the first formal acceptance, so to speak, of the offer made by Boeing to Pan American?

The Special Master: Counter-offer, I think he calls it.

Mr. Hayes: Counter-offer strictly speaking.

A. I was going to say counter-offer. The reason for my hesitancy, I can't read the date up here. Is it clear on yours?

## Connelly-Cross

Q. It is 8/22/55 in handwriting.

A. To the best of my knowledge and belief this would be the first counter-offer from Pan American.

ITr. 3276] • • • Q. About the seventh line of the text, Mr. Connelly—the line before that "Price to be same as currently offered by American which we understand four million three," do you know what that language is intended to mean?

A. Apparently we had a counter-offer from American at the time.

Q. That Pan American knew about?

A. I don't know any more than I'm reading right here. I am as perplexed as you are. I assume this could have referred to a counter-offer from American. I don't know.

Q. As of the date that Boeing received Defendants' Exhibit 154, would it have offered any of those eight first delivery positions to any other carriers without agreement of Pan American, assuming Pan American continued serious negotiation?

A. Not as long as we continued serious negotiation.

[Tr. 3277] The Special Master: How do we get to six?

Mr. Hayes: That is what I am trying to find out. I hope.

I ask that there be marked for identification telegram dated August 26, 1955, to Pan American World Airways from William Allen of Boeing.

Q. Would you read it and tell us if this is the answer that Boeing sent to Defendants' Exhibit 154 in evidence!

A. It takes some time to read it. I have to ask you to please repeat the question.

Q. If you recognize it as a response of the telegram from Pan American to Boeing.

A. To the best of my knowledge and belief, that is true.

ITr. 32781 • • • Q. Toward the latter part of this telegram, there is a quotation with proposed delivery dates of aircraft with the JT-4 engine. That is the intercontinental version, is it not?

A. No, to the best of my knowledge and belief this referred to our 707-220, which was a—the first model we proposed with a JT-4 engine.

Q. Was that intended to be an intercontinental plane!

A. It was intended with the type tanks they refer in here to give it some added range.

Q. Was it ever built?

A. We built five of them.

Q. For whom?

A. Braniff.

Q. Aside from that, was it ever built?

A. No.

Q. It was replaced for other purposes by the 320 series.

A. 320s, that is correct.

Q. Was this the first offer made by Boeing—I am referring to Defendants' Exhibit 155—of a plane designed to use the JT-4 engine?

ITr. 32791 A. Was this the first airplane—

Q. First offer made to an airline of an airplane designed to use the JT-4 engine?

- A. As best I can remember, a concurrent offer or a substantially concurrent offer was made to Braniff Airlines.
  - Q. Was a similar offer made to any other airlines?
  - A. One was made to Eastern Airlines.
  - Q. Anybody else!

er

ef

to

m

e.

e-

28

e-

re

1

n

Š.

0.

6

- A. I can only assume so, but I cannot remember positively.
- Q. Do you recall whether the delivery positions set forth in Defendants' Exhibit 155 were the same as those contained in the offers to Braniff or Eastern or were better than those contained in the offers to Braniff and Eastern?
  - A. I have no recollection.
- Q. Had there been conversations, do you know, between Pan American and Boeing with respect to an airplane using the JT-4 engine prior to the date Mr. Allen sent Defendants' Exhibit 155 to Pan American?
  - A. Yes.
  - Q. How long had they been going on?
- A. I can't speak as to time, but I would say [Tr. 3280] for several months, when it was apparent that the JT-4 engine could be made available for commercial use. It was a military engine.
- Q. At or about the time of Defendants' Exhibit 155, do you know if Douglas was planning to use the JT-4 engine in its DC-8?
  - A. Yes, I would say at about the same time.
- Q. Was it making offers to airlines of DC-8s equipped with JT-4 engines at or about the same time?
- A. To the best of my knowledge and belief, I think so.
- Q. Was it receiving orders, do you know, or was it at least conducting serious negotiations with airlines looking to their purchase of such planes?

- A. Again to the best of my knowledge and belief they were.
- Q. Once Defendants' Exhibit 155 had been sent to Pan American, would Boeing have offered better delivery positions on aircraft equipped with the JT-4 engine than it had offered to Pan American?

The Witness: Would you repeat that, please?
Mr. Hayes: Would you read it, please?
(The question was read.)

ITr. 3281] A. I cannot say.

Q. You don't know?

A. I don't know.

Q. Would your answer be the same if I added to my question the assumption that Pan American engaged in serious negotiations looking toward the purchase?

A. They were very interested in the JT-4 engine and the best airplane that could be built around it. This is not a direct answer, I realize that, to your question, but I can't answer the question directly. There was an interest in any airplane, may I put it that way, that offered a greater range payload capability than was possible with a J-57 engine.

[Tr. 3282] • • • Q. At the time that discussions were going on with Pan American, Mr. Connelly, with respect to the 120, Pan American was really looking, of course, for what eventually was the 320 type of plane, was it not?

A. They were interested in both airplanes.

Q. They never bought any more than six of the 120s, did they?

A. No, they were interested in the 120 primarily because of the more favorable delivery dates.

## Connelly-Cross

- Q. But so far as the eventual use, it was the truly intercontinental plane in which they were interested, was it not?
  - A. Yes, that's right.
- Q. When they were negotiating for the purchase of the 120s, was there any understanding between Pan American and Boeing that they would receive first preference on the [Tr. 3283] intercontinentals when they become available?
  - A. Not to my knowledge.
  - Q. Were you part of those negotiations at all?
  - A. At one point, yes.
  - Q. At what point were you a party to it?
- A. Right up to the point that we had concluded the definitive contract.
  - Q. You mean for the 120s?
  - A. Right.
- Q. Did you participate in all the conversations with Pan American through 1955 down to October, when the contract was finally executed?
  - A. No.
- Q. I think you testified this morning that you had no discussions with them with respect to the deliveries.
  - A. At what time?

The Special Master: As of a certain time.

- Q. June of 1955, or prior to June of 1955.
- A. Prior to June of 1955? I personally did not, no.
- Q. When did you get into negotiations, so far as deliveries were concerned, with Pan American?
- A. During a time we were drafting the final definitive contract.
  - Q. Can you fix the time? It was executed—
- ITr. 3284] A. I believe it was around October of that year.

Q. That is right.

A. Yes.

Q. How long were you engaged in that work?

A. I would say about three weeks or so.

Q. But the decisions had already been made as to what eventually would go into the contract, so far as deliveries were concerned, had they not?

A. This matter of preferential deliveries was still under discussion.

Q. Did you discuss it with Pan American?

A. That matter was discussed between Mr. Allen and Mr. Trippe in the presence of the entire group who were involved in the negotiations.

Q. Tell us the discussion, please, fixing the time, if you can.

A. Well, it was during these two or three weeks that we were negotiating the final definitive contract and Pan American was desirous of getting a greater number of planes, and we were representing that what we had already offered or were prepared to offer was the maximum we could consider.

Q. Can you give us the figures, please, Mr. Connelly!

A. At that time, based on their order of 25 airplanes— [Tr. 3285] in consideration of their order for 25 aircraft, which I remember was the figure, as I recall we offered them the first eight airplanes.

Q. The contract, as executed, was for 20 planes, Mr. Connelly?

A. As executed, for 20 airplanes, the preferential deliveries were cut from eight to six.

Q. Because they were negotiating for 25, you offered eight, but when they cut to 20, you offered six; is that—

A. That's the way I recall it, Mr. Hayes.

## Connelly-Cross

Q. This was negotiated, do I understand, between Mr. Allen and Mr. Trippe in the presence of the teams?

A. As I recall this matter of preferential deliveries was resolved between Mr. Trippe and Mr. Allen.

Mr. Hayes: I ask that there be marked for identification a telegram from Beall to Messrs. Allen, Mickelwait, Connelly, with a copy to Schairer, dated September 28, 1955.

# By Mr. Hayes:

Q. Would you read it, please, first, Mr. Connelly?

A. I have read it.

ITr. 32861 Q. Do you recognize this as a telegram received by the parties indicated from Mr. Beall at that time! It was produced, I might say, from the Boeing files pursuant to a subpoena.

A. Yes.

# Tr. 3287] By Mr. Hayes:

Q. As of this date were you actively engaged in the negotiations? This was 15 days before the contract was signed.

A. I don't believe so, sir. I think that our actual meeting in New York occurred after that date.

Q. Boeing was still negotiating with both American and United, was it not?

A. As I recall, it was primarily at the technical levels.

Q. They were still negotiating? Boeing still expected that sales will be made to both those airlines, did it not?

A. Both those airlines had expressed a very definite interest, yes.

- Q. Any commitments you may have made to either of them with respect to deliveries, you were holding firm until you terminated negotiations, were you not?
  - A. I would assume we did, yes.
- Q. I direct your attention, Mr. Connelly, to "Item 3, Reassignment of deliveries if UAL or American do not purchase." Do you see the portion to which I am referring!
  - A. Yes.
- Q. Had Pan American requested that if United or Ameri- [Tr. 3288] can do not purchase, that the delivery positions offered to them should be made available to Pan American?
- A. As I read this, they must have. I assume this originated with the Pan American request.
  - Q. You have no personal knowledge on this subject!
  - A. No, I do not.
  - Q. Who would, do you know?
- A. Well, I would imagine that Mr. Beall, Mr. Allen would have known about it.
- Q. It is mentioned there that under the proposed arrangements with Pan American, American and United, Pan American would get 35 planes by the time that American and United got nine.

Mr. Sonnett: Each? Mr. Hayes: Each.

- Q. (continuing) Do you consider that an example of substantial equal treatment of three different air carriers negotiating with Boeing at the same time?
- A. Yes, when you take the competitive situation into hand, I do.
- Q. The competitive situation, you mean, between Pan American and American or between Pan American and United?

- A. No, I am referring to the fact that Pan American is an overseas operator and American and United are essenti-ITr. 32891 ally domestic operators.
- Q. But you are not forgetting that United is an overseas operator, as well, are you?
  - A. Well, American goes to Toronto.
  - Q. I said "overseas," Mr. Connelly.
  - A. Well, they go over the lake.
  - Q. You know what I mean, don't you, Mr. Connelly?

    A. Yes, I know what you mean.
- Q. I have tried to avoid wisecracks. I would appreciate it if you would.

Mr. Sonnett: If you would try to avoid repetition, we can avoid this. You have been over this before.

The Witness: I am sorry. I apologize.

Mr. Hayes: Thank you, sir.

- Q. As of this date, what delivery positions were available for any other air carriers, besides Pan American, American and United?
  - A. At that particular time, I do not remember.
- Q. Were there any delivery positions available as of the date of this telegram, prior to April of 1959?
- A. I can't answer that question specifically, because I don't recall what our schedule situation was at that time.

ITr. 32901 Q. Were there any other documents that you know of that were exchanged between Pan American and Boeing between the date of Defendants' Exhibit 156 and the final execution of the contract on October 13th?

- A. What were those dates again, please?
- Q. The date of the document before you, which is September 28, 1955, and the date of the execution of the contract, which is October 13, 1955. Do you know-
  - A. I cannot recall any.

Mr. Hayes: Let us turn now to American, if we may. I ask that there be marked for identification as Defendants' Exhibit 157 telegram from Mr. Smith, president of American Airlines to Mr. Allen, president of The Boeing Company.

Q. Would you please read it, Mr. Connelly, and indicate when you have done so?

Mr. Williams: Did you give the date?

Mr. Sonnett: August 17th— Mr. Hayes: August 17, 1955.

A. I have read it.

Q. Was this the first counteroffer, so to speak, that ITr. 3291] American Airlines sent Boeing, so far as you know, in response to the offer made to American on June 24, 1955!

A. As far as I know, this was the first written counterproposal.

Q. There is reference in Defendants' Exhibit 157 by Mr. Smith that they will expect Boeing to stock an adequate supply of spare parts during the operating life of the airplane: "Our general experience in the past was that the stock maintained by Boeing was insufficient and the prices for spare parts was in excess of industry average."

Had there been difficulty, so far as you recall, in the past on the part of Boeing stocking adequate spare parts for Boeing equipment?

Mr. Sonnett: I must say I fail to see the relevance of this line of examination.

The Special Master: Subject to motion to strike, the question will be allowed.

- A. Do you mean by that trouble with American Air-
- Q. Trouble with any airline, American apparently and [Tr. 3292] others maybe. Had there been difficulty?
- A. Well, I don't think there has ever been a time in the history of the industry that someone has not complained about stocks of supplies, prices and whatnot. I would have to say this is true of every aircraft manufacturer.
- Q. You do not recall any particular difficulty with respect to Boeing's dealings with American in this regard?
- A. No, sir. The only airplanes we had sold previously to American were never delivered to American, because they sold their American Overseas Airline interest to Pan American prior to delivery of any aircraft.
  - Q. Had American flown any Stratoliners?
  - A. No.
  - Q. Or Stratocruisers?
- A. They bought some, but as I say, they sold them to Pan American when they sold their overseas rights to Pan American.
- Q. As of the date of this telegram, it had already been determined, had it not, by Boeing that it would offer the first eight delivery positions to Pan American?
- A. If Mr. Allen's letter to Mr. Trippe we looked at earlier, the date of that letter preceded this, why—
  - Q. That's right.

Tr. 32931 A. Yes.

- Q. They were still being held open, you testified.
- A. Yes. My memory—I have forgotten exactly what those dates were.
- Q. They mention here that if Pan American does not purchase within ten days, American will have the delivery positions, and the documents we have already seen indicated

that there was a telegram from Pan American within ten days of this date.

They also mention that if during such ten-day period United does purchase from you, we will be willing to share one-half the Pan American delivery positions with United.

Was there any joint agreement or were there any joint conferences, do you know, between American and United with respect to this matter of getting Pan American deliveries?

- A. Not to my knowledge.
- Q. Did United make the same proposal to Boeing about getting one-half of the Pan American deliveries in the event Pan American did not purchase?
  - A. I don't recall any such instance.
  - Q. You have no recollection?
  - A. No. sir.

TTr. 32941 Mr. Hayes: I ask that there be marked for identification as Defendants' Exhibit 158, a telegram dated August 22, 1955 to Mr. C. R. Smith from Mr. William Allen of Boeing.

- Q. Please read it, Mr. Connelly.
- A. I've read it.
- Q. Do you recognize this as the response that Mr. Allen sent to Mr. Smith in reply to the letter of Mr. Smith!
  - A. That Mr. Smith sent to Mr. Allen, right.

Q. At the bottom of page 2 of Defendants' Exhibit 158 in evidence, Mr. Connelly, it is mentioned that delivery will be at the rate of one per month for nine months commencing in April 1959, and two per month for six months commencing January 1960, that Pan American, [Tr. 3295] Boe-

## Connelly-Cross

ing is advised, is submitting a firm proposal, and that American's delivery schedule will be adjusted if Pan American does not purchase.

Do you know whether at the date of Defendants' Exhibit 158 which was in August of 1955, American had been advised what the delivery positions offered to Pan American were?

A. I can't recall specifically, but I believe not.

Q. Were you part of these negotiations with American at this time? With respect to deliveries, I mean.

A. Not with respect to deliveries.

Q. Who was handling the delivery negotiations with the various airlines?

A. Well, as these wires and the one to Pan American would indicate there were discussions between Mr. Allen, Mr. Trippe, and Mr. Allen and Mr. Smith.

Q. They were at the top executive level, those negotiations?

A. That's right.

Q. And you were not party to them?

A. Not to these particular negotiations, no.

Q. Who was handling the negotiations with United with respect to the deliveries?

ITr. 32961 A. Both Mr. Allen and Mr. Beall.

Q. Who on behalf of United?

A. Mr. Patterson.

Q. Do you know what, if any, conversations were had between anybody in Boeing and anybody in American as to what adjustment would be made in American's schedule if Pan American did not purchase?

A. I'm not aware of any and I do not believe any took

place as to any specific adjustment.

- Q. I don't know what you mean by "as to any specifiadjustment."
- A. Well, I interpreted your question to be along that line.
- Q. My question was who, if anyone, in Boeing, negotiated with whom, if anyone, in American, with respect to what adjustment would be made, instead of just an adjustment will be made?
  - A. I know nothing beyond what is in this telegram.
- Q. You are not aware as to whether or not there may or may not have been conversations along that line?
  - A. There may have been. I am not aware of it.

Mr. Hayes: I ask that there be marked for identification as Defendants' Exhibit 159, telegram from Mr. Smith of American to Mr. Allen [Tr. 3297] of Boeing, dated August 23, 1955.

- Q. Would you please read it, Mr. Connelly-
- A. I shall.
- Q. -and let us know when you have done sof
- A. I have read it.
- Q. Do you recognize this as Mr. Smith's answer to the last telegram we just saw from Mr. Allen to Mr. Smith!
  - A. I have no reason to believe it is not.

Q. On the third page of Defendants' Exhibit 159, Mr. Connelly, the middle of the page with reference to the proposed delivery schedule, American points out that under the proposal they would not have five licensed airplanes until August, 1959, and Douglas was promising the identical number at the same period, and contrast-ITr. 32981 ing it with the original proposal which was superior deliverability as compared with others.

Do you know anything with respect to the difference between the original proposal, the one to which Mr. Smith addresses himself here?

- A. Neither of those schedules are before us.
- Q. You have no recollection as to them at all?
- A. As to either one.
- Q. He mentions one of them. The first delivery is in the previous letter.
- A. I might refer back to that letter we were looking at this morning.
  - Q. First, one plane in April of 1959.

Do you notice? It is on page 2 of Defendants' Exhibit 158.

Mr. Sonnett: Do you want him to look at it?

Mr. Hayes: Yes, he said he did not have it before him. I am directing his attention to it.

Mr. Sonnett: He now has it before him.

Mr. Hayes: I thought he had it before him.

Mr. Sonnett: No, I took it away from him when I thought you were through with it ten minutes ago.

[Tr. 3299] Is there a pending question?

Mr. Hayes: Yes.

The Special Master: I think so. If you can get in mind the two, the earlier delivery date and the later one, is that correct?

Mr. Hayes: That's what it was. What was the

The Special Master: See if you have any comments on them.

The Witness: I'm at a loss what to compare this with.

- Q. I would assume it would be the one in Defendants' Exhibit 97 which is the only one we found from your files.
  - A. I don't have it here.
  - Q. Take my copy, Mr. Connelly.

Mr. Sonnett: Don't these documents speak for themselves? The witness said he couldn't be expected to have a recollection now of a particular delivery schedule of some years ago.

The Special Master: As I understand it, if he has the two in front of him then the question is whether he recalls any reasons for the differences or any discussions connected with them.

(Tr. 33001 Mr. Hayes: That is right.

The Witness: Well, this original letter quotes one a month beginning in April 1959, for nine months. This Paragraph 5 of the telegram, speaking in narrative form and not in tabulation said delivery would be at the rate of one per month for nine months beginning in April 1959.

They would appear to be the same.

Q. But the later deliveries are different, are they not?

A. I'm sorry. I'm missing something here.

Q. How about the 1960 deliveries, aren't they different!
A. I only have the letter of June 24th and Exhibit 158.

Q. Correct.

- A. My examination of that would show that the schedules in both were identical.
- Q. Was the reference then in Defendants' Exhibit 159 which you have before you on page 3—do you know this—whether the reference there to the attractive features of Boeing's original proposal was superior deliverability as compared with others, do you know whether the others

# Connelly-Cross

referred to other airlines or other manu- [Tr. 3301] fac-

- A. I think it referred to manufacturers.
- Q. Is this a speculation of yours, Mr. Connelly, or do you know?
- A. No, that I think is quite clear. He refers to Douglas. He says one of the attractive features of your original proposal to us was superior deliverability as compared with others.
- Q. Do they mean what others could get from other manufacturers, other airlines could get, do you know? Or don't you know what it means?
- A. Well, I can only give you my interpretation of what I read.
- I think he is referring to Douglas, Convair, Lockheed or any other manufacturer.
- Q. You had no personal conversation at this time on this subject with Mr. Smith or any representative of American, did you?
- A No, sir.
- Q. Take the last paragraph of that Defendants' Exhibit 159, referring to an acceleration date of deliveries in the event other potential customers delay and American's objection to the lack of a cutoff date for such other orders.

Tr. 33021 What, if anything, did Boeing do with respect to that request of American, do you know?

- A. Well, in one of these wires it seems as though Smith had proposed there ought to be a cutoff date of September 9th, as I remember, and if—I assume that in his opinion if anyone delayed beyond that date, there ought to be a real-location of delivery.
  - Q. As to those who ordered later!

A. Or those who had let proposals lapse or had taken no action.

I would like to check that September 9th date.

Q. Go right ahead.

A. I don't know where it is. I think it is the prior wire-

Mr. Sonnett: This one you are thinking of. It is September 30th.

The Witness: September 30th?

Mr. Sonnett: I don't know. There is a reference to September 30th.

The Witness: Right in here? Mr. Hayes: Yes, right there.

The Witness: Oh, it is in that paragraph.

"Suggest September 30th this year be established as cutoff date."

ITr. 3303] Q. What does that paragraph mean to you as to what American's suggestion was, Mr. Connelly!

A. Well, to me it means they are suggesting that if other customers to whom we had made proposals failed to act by September 30th that there should be a reallocation of those positions which would benefit American Airlines.

Q. The other customers would have been at that time Pan American and United, would they not?

A. Primarily, yes. There could have been others.

Q. What, if anything, was done with respect to this suggestion of American's, by Boeing?

A. I don't recall anything that happened as a result of that.

Mr. Hayes: I ask that there be marked for identification as Defendants' Exhibit 160 telegram from Mr. Allen of Boeing to Mr. Smith of American Airlines, dated August 25, 1955.

# Connelly-Cross

Q. Would you please read it, Mr. Connelly, and indicate when you have done so?

A. I read it.

[Tr. 3304] Q. Do you recognize this as Mr. Allen's answer to the telegram from Mr. Smith that we have just been talking about?

A. Yes.

Q. In the last paragraph Mr. Allen states that Boeing does not intend to hold delivery positions open indefinitely for latecomers.

Does that indicate to you that Mr. Allen interpreted Mr. Smith's prior telegram as referring not to those with whom you were then negotiating but with those who had not yet been negotiating?

- A. I can't say exactly what I think this means.
- Q. You had no discussions with American representatives on this matter, is that correct?
  - A. No, I did not.
- Q. Mr. Allen further says that he believed we can work out some understanding with American on this point after we have reviewed with you and United the [Tr. 3305] time required to develop detailed specification and negotiate contract.

Was any understanding ever worked out with United on this point of deliveries or cutoffs?

- A. You mean with American?
- Q. I meant American. I'm sorry.
- A. Well, whatever understanding was worked out was worked out in the final schedule contained in the contract.
- Q. This has to do with the holding open of delivery positions for others. The final contract was not executed until March 1, 1956, which was several months after this.

A. That is correct. But of course the situation changes as I mentioned as we go along.

In other words, I don't mean to say that we could be bound by a schedule we quoted in June-July 1955.

- Q. I just want to know if you know if any understanding was worked out with American, Mr. Connelly.
  - A. In the final contract, yes, sir.
- Q. Aside from the final contract, do you know of any understanding that was worked out?

A. No.

ITr. 3305Al Q. Do you know of any understanding worked out with American prior to the execution of the final contract?

A. Well, there was an understanding prior to the time signatures were affixed.

ITr. 33061 Q. What was that understanding?

- A. The same understanding as contained in the contract.
- Q. What did that provide, if anything, if you can recall as to cutoff dates for others?
  - A. It provided nothing in that respect.
- Q. So there was no understanding, is that your testimony?
  - A. No, I didn't say that.

In the schedule contained in the contract, if there was any adjustment, it was contained in that schedule.

Q. Maybe we have been talking at cross-purposes, Mr. Connelly. Defendants' Exhibit 160 refers to working out an understanding with American with respect to the time Boeing would hold open delivery positions for latecomers.

What I am trying to find out from you is whether any such understanding was ever worked out with American.

A. Not to my knowledge.

Mr. Hayes: I ask that there be marked as Defendants' Exhibit 161 for identification a copy of a letter from C. R. Smith to Mr. William Allen dated October 19, 1955,

[Tr. 3307] • • • The Witness: I have read it.

- Q. Is this, so far as you know, this letter, the ITr. 33081 next exchange of any kind between Boeing and American in writing after the date of the last exhibit which was, I think, in August 1955?
  - A. I have no reason to believe otherwise-
- Q. As of October 19, 1955, is it a fact that Boeing was still actively negotiating with United and American and would not for the benefit of any other airline which then came along give to such airline any position that had been quoted to United and American?

The Witness: I hate to ask you to repeat that again, sir, but I wish you would.

Mr. Hayes: Would you read it, please? (The question was read.)

A. Yes, we were in firm negotiations with those parties, and we would not disturb in any way their quoted delivery. So long as the negotiations were in progress should be added to that.

Mr. Hayes: I ask that there be marked for identification two separate letters because they are dated the same date, to wit, November 1, 1955.

The first of them is a two-page letter and the second is a four-page letter to which is attached a list of master changes which runs for four or five pages.

Could they be marked respectively as Defendants' Exhibits 162 and 163.

Q. Tell us first if you recognize those letters as the response to Mr. Smith's letter to which I have just directed your attention.

Mr. Sonnett: Which one? You want them both?
Mr. Hayes: Yes, they are both responses to the same letter.

I might mention for the record that Defendant' Exhibits 162 and 163 are in response to letters of October 19th and October 24th.

Tr. 33101 The papers delivered to us by Boeing pursuant to the subpoena did not have any copy of the October 24th letter. The October 19th one is one that has already been marked as Defendants' Exhibit 161.

Mr. Sonnett: In the interest of completion of the record, Mr. Brownell, we have a copy which we obtained from Boeing of that October 24th letter.

Mr. Hayes: Do you? Mr. Sonnett: Sure.

Mr. Hayes: We didn't get one.

Mr. Forrow: It was shown in the covering memorandum that we received.

Mr. Martin: It was shown to you-

Mr. Sonnett: So, I very gladly tender it to comsel.

Mr. Hayes: We did not have it. I am happy to have it.

So the record will be complete, may I ask that there be marked as Defendants' Exhibit 164 for

identification a copy of letter from Mr. Smith to Mr. Allen dated October 24, 1955.

[Tr. 3311] • • • The Special Master: Do you want the witness to examine it?

Mr. Hayes: Yes, please.

- A. I read them.
- Q. Taking together Defendants' Exhibits 162 and 163, Mr. Connelly, was Defendants' Exhibit 162 the first information that Boeing gave American as to the delivery schedule it had set up with Pan American?
  - A. I can't answer that question because I don't know.
- Q. Looking at Defendants' Exhibit 163 on the second page the delivery schedule set forth there proposed to be for American is substantially better, is it not, than the delivery schedule that was proposed in the June 1955 letter to American, which is Defendants' Exhibit 97?
- A. Is that the schedule where it is one per month starting in April?
  - Q. That is right.
  - A. For nine months?
  - Q. That is right.

[Tr. 3312] A. Yes, this would be an improvement over that.

Q. There was a difference also in that American was now talking about 20 airplanes instead of 15.

In Defendants' Exhibit 162, there is also a provision that if American accepts, Boeing's first plane of a certificated plane to an additional customer would be in April with the next in June.

Did that include all additional customers over and beyond Pan American and American

A. These would be as best I can determine their next two possibilities for the incorporation of—or the introduction of a new customer.

The Special Master: Next to over and above what?

Mr. Hayes: Over and beyond the commitments that had been made to Pan American and American for deliveries prior to April 1959.

The Special Master: Not over and above United! Mr. Hayes: United is not mentioned here. I am

going to ask that question.

The Witness: Well, I can't remember exactly the date United made its decision to purchase DC-8s, but it was prior to the time we [Tr. 3313] entered into a letter contract with American Airlines. So it was known at that time that American Airlines—or that United Airlines was no longer in the picture so far as Boeing was concerned.

Q. Do you know whether or not the schedule contained on page 2 of Defendants' Exhibit 163 benefited American by awarding to American, so to speak, the delivery positions that had previously been held up to then for United?

A. I can't state precisely what it was, but I assume some

of the airplanes were reallocated to American.

Q. Assuming that American accepted the proposal contained in the November 1, 1955 letters, Defendants' Exhibits 162 and 163, no other carrier could get a contract providing for delivery of a certificated plane prior to April 1959, even if it appeared and entered into a firm contract the following day, is that true?

A. Well, may I ask a question? Again we are talking about entering into a contract. Had they been in negotiations, serious negotiations prior to that time?

Q. Let us assume a carrier showed up on November

A. And indicated his first interest?

- Q. Indicated that he was prepared to buy X number [Tr. 3314] of airplanes and is prepared to sign a contract as soon as it could be drawn up.
- A. That's about as definite as you could be, but there had been no prior indications.
  - Q. Let's assume that.
- A. Assuming that, the answer to the question is no, he could not have obtained earlier positions.
  - Q. So that the negotiation is what is important—
  - A. Yes, sir.

ve

ts

I

m

t

- Q. —rather than the date of the contract?
- A. Yes, sir.
- Q. I notice that in this third paragraph after the delivery schedule on page 2 of Defendants' Exhibit 163, Mr. Allen points out to Mr. Smith that under this revised schedule American would have ten rather than five airplanes by July 1959.

Do you see that, Mr. Connelly?

A. No, I am sorry, I don't.

Mr. Sonnett: Page 2. Mr. Hayes is talking about that paragraph (indicating).

The Witness: Yes.

Q. Had Boeing prior to the November 1st letter reviewed its proposed delivery schedules so that it could offer more planes to American by July 1959, than [Tr. 3315] Douglas was willing to offer?

A. I can't answer as to Douglas. I assume that this does represent an adjustment that was possible when United

purchased Douglas airplanes.

Q. You will recall in a prior letter of Mr. Smith's he protested that he would have only five planes under the delivery schedule which was the same number that Douglas was proposing by the same date.

My question to you was, was this improvement in delivery positions dictated at least in part in order to get around Mr. Smith's concern that he would be getting Boeings' no sooner than he could get Douglas'?

A. No, sir, because I'm quite certain that when United bought the airplane, I questioned that Douglas was in a

position to meet that delivery schedule.

Q. Do you know that?

A. No.

Q. This is speculation on your part?

A. Speculation.

Q. I direct your attention to the second paragraph—this is on Defendants' Exhibit 162, the shorter letter—after the delivery schedule on page 1 of that exhibit, the last part of that sentence after the semi-colon reading:

(Tr. 3316) "We do not reach a total rate of five airplanes per month until August 1959."

Is that a reference to Boeing's productive capacity!

A. Yes, that would refer to the production schedule.

Q. What was the rate of the production capacity prior to August 1959?

A. I can't recall what that was.

Q. Was it for any greater number of planes than would be sufficient to take care of Pan American and American, plus maybe one or two others beginning in April, 1959?

A. It was adequate to take care of that.

(Tr. 3317) The Special Master: Proceed.

By Mr. Hayes:

Q. Did I understand you to say in substance yesterday, Mr. Connelly, that Boeing never made arrangements with

any one airline whereby that airline could transfer its contractual rights to another airline, except in the case of affiliates?

- A. Without the consent of the company.
- Q. Pardonf
- A. Without the consent of Boeing.
- Q. Did Boeing ever agree that it would accept such a transfer?
  - A. Yes.
  - O. That was your testimony?
- A. Yes, we have agreed in certain instances. The case of Hughes Tool-TWA was one.
  - Q. That was not one other airline to another, was it?
  - A. No.
- Q. I am talking about an agreement between Boeing and one airline, whereby as part of the agreement Boeing undertook, under certain conditions, whatever they might be, that the first airline could transfer its rights to the second airline.

Tr. 33181 A. Mr. Hayes, I may have—maybe I am wrong in my recollection, but I think I also testified that we had permitted Pan American to transfer a certain number to certain foreign airlines-

- Q. That is right.
- A. (continuing)—in order to assure landing privileges.
- Q. That is correct. You did testify to that. You also included affiliates.
- A. Yes. And there are provisions—and this is a matter of record in the contracts themselves—where a transfer is made purely for financing purposes, and this is, you might say, approved in advance.
  - Q. There are no other exceptions you can think of?
  - A. I can think of none.

Q. At the time that Pan American entered into the contract for the 320 series, was there a side agreement by the terms of which, in substance, if Pan American should exercise an option to purchase additional 321s, which was the Pan American designation, it could notify Boeing to cancel out so far as it was concerned its contract for the 120s, and that Boeing, being paid, of course, would substitute in effect American for the delivery positions that were given up by Pan American?

[Tr. 3319] A. That is not the way I recall that arrange

ment to be-to have been.

Q. How do you recall it?

A. In consideration of the purchase of a number of 320 type airplanes, we agreed that Pan American could cancel out a number of their—not all, but a number of their 120 airplanes. And we agreed that they could sell a certain number of those airplanes to other airlines.

Q. To other airlines or just to American?

A. I can't recall it being specifically to American. It could have been.

Q. Let me show you a letter to Pan American Airways from Boeing, signed by J. B. Connelly, Director of Contract Administration—

A. I certainly should have read that one, shouldn't I!

Q. (continuing)—dated December 19, 1955. I might mention this letter is part of Defendants' Exhibits 79 and 81 which are the contracts with Pan American.

Will you review that and tell me whether or not in fact, Pan American did not enter into such an agreement in substance as I described it?

A. I have read it.

[Tr. 3320] • • • The Special Master: Do you recall this letter, having signed this letter? The Witness: Oh, yes, there is no question [Tr. 3321] I signed this letter.

# By Mr. Hayes:

- Q. Having read that letter, Mr. Connelly, do you desire to change your testimony with respect to the matters you covered vesterday in this regard or again this afternoon?
  - A. No, sir.
  - Q. You do not?
  - A. No.
- Q. You see no inconsistency between the letter of December 19, 1955, and your testimony?

Mr. Williams: I object to the question. He is arguing with the witness.

Mr. Hayes: No argument.

Mr. Williams: Do you want to add to anything you have testified to?

The Witness: No.

Mr. Hayes: I press my question.

# By Mr. Hayes:

Q. You see no inconsistency between your prior testimony and what you on behalf of Boeing agreed to in the December 19, 1955 letter?

Mr. Williams: I object to the question.

The Special Master: Overruled.

ITr. 3322 The Witness: Is it my turn?

Mr. Williams: Yes. Do you see any inconsistency with what you have testified to and the letter?

The Witness: Perhaps it could be construed as that

This arrangement was an offer on our part in respect to a purchase of the 320 airplane, and the obvious desire of Pan American to eventually equip itself with 321s in place of 120s, if this was possible to do.

As to an inconsistency, this could be construed on four airplanes, but certainly not on six of the ten, where we did give them the permission to sell six to other airlines.

Are you referring specifically to the four to American Airlines?

# By Mr. Hayes:

- Q. I am referring to the whole letter, Mr. Connelly.
- A. The whole letter?
- Q. Yes.
- A. Well, I think I have explained it as best I can, the arrangement, the purpose of it. I do not consider it inconsistent.

ITr. 3323 I would like to say this: No company can operate rockbound tied, inflexible under conditions of that type. There are exceptions to every rule.

- Q. Including the rule that Boeing is going to decide the order of deliveries to its customers?
  - A. Absolutely.
- Q. Was American aware of the agreement made on December 19, 1955, between yourself and Pan American!
  - A. Yes, they had to be aware of it.
  - Q. Was any other airline advised of it?
  - A. Not to my knowledge.

Mr. Hayes: I ask that there be marked as Defendants' Exhibit 165 a memorandum, a copy, from Mr.

Allen to Mr. Smith, dated February 15, 1956, with copies to various people, including Mr. Connelly.

- Q. Would you read it, please, Mr. Connelly, and indicate when you have done so?
  - A. I have read it.
- Q. Do you recognize this as a copy of a letter from Mr. Allen to Mr. Smith?

[Tr. 3324] A. Yes.

Q. This letter was written roughly two weeks before the contract with American had been signed. It was signed on March 1, 1956.

The Special Master: TWA, you mean? Mr. Hayes: With American.

- A. That was the definitive contract.
- Q. That's right, the definitive contract.
- A. What was the date of the letter contract? I have forgotten that date.
- Q. It was back in August of 1955. November—pardon me—November 1955.
  - A. November 1955?
  - Q. Yes. Pan Am was August.
  - A. American.

Tr. 3325] • • • Q. The American letter agreement was November 1st?

- A. November 1st.
- Q. Yes. But the final agreement was not executed until March 1, 1956.
  - A. Yes, that is correct.

- Q. First, do you know who put in these pencil notations or ink notations that are part of the schedule and wrote in "October" at the end? Do you recognize the handwriting, Mr. Connelly?
  - A. No, sir, I do not.
  - Q. In the first paragraph, the third sentence reads:

"So far as I am aware, this delivery schedule is consistent with all understandings between us, either expressed or implied."

What were the implied understandings between American and Boeing?

- A. I can recall none.
- Q. If they existed, they may have been known to Mr. Allen, but they were not known to you; is that it?
  - A. If they existed, that is correct.
- Q. Do you interpret Mr. Allen's letter as indicating that there may have been some implied understandings?
- A. Well, as a layman's opinion, Mr. Allen was a IT. 33261 lawyer for a long time. Maybe this is a legal expression. I don't know, sir.

Mr. Hayes: I ask that there be marked as Defendants' Exhibit 166 a letter dated March 26, 1956, from Mr. Smith to Mr. Allen.

Mr. Hayes: I ask further that there be marked as Defendants' Exhibit 167 for identification copy of a letter from Mr. Allen to Mr. Smith, dated March 28. 1956.

#### By Mr. Hayes:

- Q. Would you read them both, Mr. Connelly, and advise me when you have done so?
  - A. I have read them.
- Q. You recognize them as letters that were exchanged between Mr. Smith and Mr. Allen?
  - A. Yes.
- [Tr. 3327] • Q. Mr. Allen mentions in Defendants' Exhibit 167 that American was the principal beneficiary of the early delivery positions given up by Pan American.

What were those delivery positions?

- A. Well, this would have referred to those airplanes that became available by reason of a cutback in Pan American's order for the 120s from the original figure of 20 to 10. He referred here it was the principal beneficiary.
  - Q. Who were the other beneficiaries?
  - A. I have no knowledge.
- Q. Both before and after Pan American entered into the amendment changing from 120s to 320s, there was no delivery position available to any other airline prior to April 1959, isn't that correct?
  - Tr. 3328 • The Special Master: Do you want to rephrase the question, then, and make that clear?

Mr. Hayes: I will try.

#### By Mr. Hayes:

- Q. At any time after June 1955, when Boeing made its [Tr. 3329] original written offers to both Pan American and American—
  - A May I interrupt? You mean 1954 rather than 1955?

- Q. I mean 1955. June 23rd to Pan American and June 24th to American and the same date to United.
  - A. All right.
- Q. Those letters, I am referring to. After those dates and the responses by both Pan American and American indicating their good faith, negotiations looking toward a contract, were there any delivery positions available to any other airline, leaving United aside, prior to April 1959?
  - A. We had quotations out on other customers, yes.
  - Q. For deliveries prior to April 1959?
  - A. No, not prior to April.
  - Q. That is what my question was.
  - A. Well, the question is somewhat complex.
  - Q. Try it this way: Did Boeing-
  - A. I can answer this simply, if I may just-
  - Q. Sure, go ahead.
- A. What improvements came about here, that is, American was the principal beneficiary of the early delivery positions given up by Pan American, would be those—that portion of the 10 airplanes that were after the committed priority airplanes, if we could refer to [Tr. 3330] them as such, available for transfer. I don't see how they could have been any others.
- Q. Were any of those available prior to April 1959, to any airline?
  - A. They could have been.
- Q. Were they made available by Boeing to any other airline prior to April?
  - A. Not after Pan American.
  - Q. Pardon!
- A. Not after Pan American signed up, they were not, no.
- Q. I will try this again. After June 24, 1955, when Boeing made its letter offer to Pan American, and June 24



1955, when Boeing made its written offer to American, and after the two airlines, by engaging in negliations, indicated their good faith to Boeing, did Boeing offer a delivery earlier than April 1959 to any other airline?

- A. Only TWA.
- Q. It did not offer them to TWA, did it?
- A. Well, that's where their delivery schedule started.
- Q. It started in April, but I said prior to April 1959.
- [Tr. 3331] A. No, nothing prior to April.
- Q. None prior to April 1959?
- A. As best I can recall.
- Q. Do you recall when American reduced its offer from 30 to 25 planes, Mr. Connelly?
  - A. I don't recall the date. I recall the circumstances.
- Q. Can you tell us by year or by reference to some event that we can fix in time?
- A. Well, the event was the availability of the Model 720 airplane, and I—
  - Q. That was roughly established as 1958.
- A. All right, if that was 1958, that was the time. And they wanted to cancel those five out, which they always had a right to do in consideration of the fact they were buying 25 720s.
- Q. Which five did they cancel, do you recall? Was it the last five?
- A. The last five. I think their right of cancellation extended only to the last five.
- Q. I honestly don't recall whether I asked this question before or not, Mr. Connelly, so pardon me.
  - A. Well, we will try it again.
- Q. I just don't recall. At the time that Pan American [Tr. 3332] entered into the contract for the 120s, was there any understanding between it and Boeing that it would be

able to cancel out the 120 contract and switch to the 320 series when the intercontinental plane became available?

- A. No.
- Q. None?
- A. None.
- Q. Was there any understanding that if it did subsequently order the intercontinental plane, it would receive any preference such as it enjoyed in the contract for the 120s?
  - A. None to my knowledge.

[Tr. 3333] Q. So the preference given it in the contract for the 320s was separately negotiated at the time the contract was entered into?

- A. That is correct.
- Q. Production was accelerated, in fact, by Boeing, was it not, both of the 120s and the 320s?
- A. Let's say we had good luck. By that, I mean that this was not an action in itself to accelerate. We were fortunate in being able to certificate the airplanes early enough and obtain manufacturing efficiency so that our schedules turned out better than we had originally estimated.
- Q. With respect to the 320s between TWA and Pan American, the contract with Pan American contained a provision that Pan American was to receive at least five aircraft prior to the delivery of any such aircraft by Boeing to any other customer. You recall that, I [Tr. 3334] assume?
  - A. There was a preferential clause, yes.
- Q. The actual deliveries, and as set forth in the statement attached to your prepared statement, show that Pan American received ten of the 320s before the first of the 320s was delivered to TWA or Tool Company.

How did that happen? The preference was for five.

A. Because of the capability we developed to manufacture and deliver the airplanes earlier.

I think you will find that TWAs were accelerated also.

- Q. Yes, but not to the same degree. That is what I am trying to find out.
  - A. It could be.
- Q. What is the reason why Pan American got the first ten out of a total order of 17?
  - A. Production reasons.
  - Q. Is that the only answer you can give?
  - A. That is the only answer I can give.

The Special Master: Didn't some foreign airline come in there?

The Witness: Well, we—this was a general thing. All schedules were—turned out to be [Tr. 3335] better than our contract schedules.

I was trying to answer Mr. Hayes' question why was it ten rather than five. We still met all of our contract obligations, and we were still able to deliver airplanes generally earlier to all our customers.

- Q. You have no other explanation as to why-
- A. Again I would point out when you are looking at a delivery schedule this is not a production schedule.
- Q. What held up the planes that were destined for
- A. I don't know. There could have been any number of reasons.
  - Q. Was it again air conditioning in the case of the 320s?
  - A. I can't answer what specifically the reasons might be.

    Q. Was it the difference in configuration?
- A. These things could have had a bearing on it, but in ceneral most of those problems having been ironed out on

the 120, except for the differences in the airplane itself—I mean the larger airplane as compared to the smaller—the changes in themselves on the 320 should not have had as great an impact, unless by virtue of ITr. 33361 the larger airplane it brought about some peculiar result that made the airplane unacceptable until certain fixes were put in.

Q. Is it not a fact that there was no foreign airline that received any delivery of a 320 before TWA received its

first 3201

A. As I recall, TWA was the second airline to receive 320s.

Q. That is right.

A. Yes.

- Q. So it had nothing to do with foreign airlines, as such, that TWA got the first ten?
  - A. Well, that is correct.

Q. I mean that Pan Am got the first ten.

A. The foreign airlines, as I mentioned yesterday, their detailed specifications came closer to our basic specification than did TWA.

Therefore, when we had certificated the basic airplane—well, not a basic, but the Pan American airplane, most of the systems were the same in the foreign airlines, and with the exception of BOAC where we had problems in getting not only FAA certification but the Air Registration Board certification in Great Britain, those airlines received deliveries earlier than con-[Tr. 3337] tracted for.

Q. Do you know what, if any-

The Special Master: Could I ask a question?

Mr. Hayes: Certainly.

The Special Master: If there was no foreign airline that came in between there, between the deliveries to Pan Am and the deliveries to TWA of this 320

series, what difference would it have made whether the Tool Company ordered 320s in October of 1955, say, or the spring of 1956, as far as delivery positions are concerned?

The Witness: Would you repeat that question, please?

(The question was read.)

The Witness: We held some positions in reserve, as I recall, for Northwest and for possibly TWA. There was more interest on the part of TWA in a larger airplane at least originally, than any other customer, American flag carrier might come into the picture.

In the case of BOAC, we couldn't deliver early because they had a different model. It was a 420 rather than a 320. It had a Rolls engine.

The Special Master: In that interim period, ITr. 33381 then, do I understand your reply that some delivery positions were held for actual customers such as Northwest and BOAC and continued to be held by reason of continuation of negotiation?

The Witness: I mentioned American flag carriers, sir, not BOAC.

The Special Master: Anyone other than Northwest?

The Witness: TWA is a possibility, National, Eastern. That's a very good airplane for the San Juan trade. Therefore, we thought Eastern would have an interest in the airplane. But—

The Special Master: Does this line of questioning refresh your recollection at all as to the number of places that were held open in the order of delivery positions on the 320 series say, in October of 1955 or up to the spring of 1956?

The Witness: I cannot remember the number. The Special Master: That is all I have.

# By Mr. Hayes:

Q. The 320 you did not contract for, even offer in October of 1955, did you?

[Tr. 3339] A. No.

- Q. That was in December of 1955?
- A. Right.
- Q. Your contract with Pan American I think you stated was negotiated very speedily?
  - A. Right.
- Q. The date of the contract for the 320s was December 19, 1955.

If TWA had placed its order on December 20, 1955, would it have received any better delivery positions than it did!

A. If they had started negotiations earlier than Pan American or evidenced a keen interest to buy the airplane at that time. Largely this was business judgment on our part in retaining positions for TWA. By that time, we felt that Convair was committed to a medium range airplane, and at least we had a fighting chance for Douglas to eventually provide TWA with long range aircraft.

Q. I will try the question again, Mr. Connelly.

If on December 20, 1955, TWA without prior negotiation with Boeing showed up and said, "We want to enter into a contract for the 320 series," would they have received any better delivery positions than [Tr. 3340] they did receive!

- A. No, because Pan American had started negotiations earlier.
- Q. Again this comes back as it did on the 120s as to when you started negotiations?
  - A. Right.

The Special Master: I can't see that I must say on the state of the record as it is now it makes any difference as far as delivery positions are concerned as to whether Tool Company ordered before March 1956 or not.

Mr. Hayes: I don't either.

The Special Master: I would like to have any additional evidence on that we can get. The 320s I am talking about.

Mr. Hayes: Yes.

Q. I think you testified that until the-

The Witness: May I ask a question?

Do you mean by that you think we were so committed in one direction that it could not go the other direction, Mr. Brownell?

The Special Master: Who came in? I don't know of any other line. I am not discussing the policy as such but discussing the facts as nearly [Tr. 3341] as we can reconstruct them as to what happened there during this period. I don't know of any negotiations that you had with other airlines other than Pan American and American and TWA that changed the situation so far as early delivery dates are concerned between Christmas 1955 and March 1956.

The Witness: Of course American was not involved in the 320.

The Special Master: No, that is right. I wasn't sure so I put them in to make doubly sure.

The Witness: Yes.

Well, I can only say that I feel the picture could have been quite different had TWA stepped in first. That's just my own opinion.

The Special Master: But as long as they didn't, what difference does it make whether they did or not? That is what I am trying to get at.

They are claiming damages here as I understand it because of this delay in the placing of the order, confining us now to the 320s, but I can't see from what you told us or what we have gathered from other parts of the record that that made any difference so far as the allocation of [Tr. 3342] the early delivery dates are concerned.

Mr. Sonnett: Would you ask him, Mr. Brownell, whether any airline ever ordered aircraft without a preceding period of negotiation? Placing of orders—

The Special Master: I will make it broader than that. Did anything happen during this period by way of orders or negotiations, either one, which made a difference, as to whether TWA would get its early deliveries?

The Witness: I don't know how you answer that question.

Mr. Sonnett: I have some redirect which I think may be helpful. I will ask him now or later as you prefer.

The Special Master: That is up to Mr. Hayes.

Mr. Hayes: Go ahead. As long as the Master has brought this subject up, I'd just as soon have it down now.

Mr. Sonnett: Are you nearly finished?

Mr. Hayes: Almost.

Mr. Sonnett: Why don't you finish and I will go ahead and then I will do it all at once.

[Tr. 3343] The Special Master: All right, that will be more orderly I guess.

#### A-1171

#### Connelly-Cross

The Witness: Maybe one thing I haven't made clear is that these were all hypothetical questions obviously but if we had three airlines that came in immediately and every one of them had to be first and have some preference over the other, and we had to make the decision as to who would be first and what the respective delivery schedules would be, the original allocation, irrespective of what we may have quoted somebody, would have had to change, so that we could provide relative equality as best we could, within the limitations of our ability. First—we have to pick one to go ahead first obviously, and how rapidly can we introduce customers.

The Special Master: As a matter of theory or as a matter of policy I think you made quite clear.

The Witness: Have I made that clear?

The Special Master: My only question was what in fact happened.

The Witness: All right. That's the only point I have.

# [Tr. 3344] By Mr. Hayes:

- Q. I think you testified that you did not participate in any TWA negotiations until the last part of 1955?
  - A. To my knowledge and belief, that's correct, sir.
- Q. There was a letter of intent signed in early January 1956.

With whom did you negotiate?

- A. I negotiated with Mr. Rummel and Mr. West and I know conversations were had—you want the people directly—
  - Q. That is right.
  - A. Mr. West primarily.

Q. Is that the Mr. West who was attorney for TWA?
A. That's right.

And there were telephone discussions between Mr. West and Mr. Rummel. Mr. Wells who was with us had some telephone conversation with Mr. Rummel. And Mr. West, I believe, communicated from time to time with Mr. Raymond Cook.

Q. Was Mr. Hughes any part of the negotiations, do you know?

A. I cannot recall. Certainly not in person.

[Tr. 3345] Mr. Hayes: I have just a few exhibits I wanted to mark.

I ask that there be marked as Defendants' Exhibit 168, a memorandum from Mr. Beall to Messrs. Allen and others including Mr. Connelly dated September 23, 1955.

- Q. Would you please read it and indicate when you have done so, Mr. Connelly?
  - A. I have read it.

Q. Do you recognize it as a memorandum, a copy of which you received, at or about the date it bears?

A. I don't recall the memorandum but I received it all right. There is no question about that.

[Tr. 3346] • • • Q. Was the recommendation contained in the last paragraph followed by Boeing?

A. This had primary reference, I believe, looking at the date, September 23rd, to the 120 series, because there is nothing in here that says anything—

Q. That is correct.

A. Down at the bottom there is a note that a Model 707 comparison sheet JT 3C-4 which was the smaller engine and

the JT 4A-3, the larger engine were sent to Mr. Hughes by special messenger.

[Tr. 3347] I only bring that up because it is the first indication that we were able to get some information on the -I would assume this to be the 707-120 Model, not the 320, had been forwarded.

I would have to say that we must have concluded at that time that our prospects of selling 120 airplanes to Mr.or to the Hughes Tool Company were very nominal and that we should concentrate on Pan American and United.

- Q. At any rate, no special effort was made to sell Mr. Hughes or TWA the 120 series at that time?
- A. I can't remember whether we sent them a proposal or not, at the same time we sent out proposals to the others, but certainly we concentrated on those three customers.
- Q. I ask you again, was any special effort made to sell the 120 series to either the Tool Company for TWA or to TWA directly at or about the time of this letter?
  - A. I'm quite certain, Mr. Haves, we maintained contact.

ITr. 33481 Q. What does that mean?

A. Well, I'm sure our engineers continued to call on the TWA engineers, keep them up to date.

Certainly, I don't believe negotiations were carried on nearly to the same degree as they were with the other three carriers but I wouldn't want to leave the impression that we just gone off and left a good prospective customer.

- Q. You did not work on that prospective customer as hard as you worked on Pan American, American and United, is that correct?
  - Apparently we had been discouraged.

The Special Master: Discouraged by whom?

The Witness: By the lack of interest. The Special Master: On the part of-

The Witness: Well, this refers to the discussions with Mr. Hughes. And it was Mr. Beall's conclusion that at the moment it didn't appear—I am reading my own words into this memorandum—that it appeared that there was not the degree of interest that warranted us concentrating on TWA to the same degree as the other three who were in active negotiations with us.

The Special Master: Did you have an [Tr. 3349] independent judgment on that at the time.

The Witness: No, sir, I was not in contact with TWA, as I say, until between Christmas and New Year's, 1955, and I think this was September.

- Q. By the way, Mr. Connelly, who is Nat Paschall?
- A. Nat Paschall is vice president and director of the Douglas Company.

Mr. Hayes: I ask to be marked as Defendants' Exhibit 169 for identification memorandum from Mr. Beall to Mr. Allen and others including Mr. Connelly, dated October 31, 1955.

- Q. Would you please read it, Mr. Connelly, and indicate when you have done so?
  - A. Yes, sir. I have read it.
- Q. Do you know whether this conversation was a call from Mr. Hughes to Mr. Beall or from Mr. Beall to Mr. Hughes?
  - A. I do not know.
- Q. You received a copy of this in the regular course of business?

ITr. 33501 A. Yes.

- Q. Have you any way of knowing, Mr. Connelly, whether Mr. Beall told Mr. Hughes what Pan American's schedule was?
- A. I have no way of knowing, but I'm quite certain he did not.
- Q. I show you, Mr. Connelly, Defendants' Exhibit 102 for identification. I am terribly sorry for the reproduction. That was the best we were able to get, unfortunately.

The Special Master: This is not in evidence?

Mr. Hayes: No. This is one of those that was excluded, Mr. Brownell, because Mr. Connelly was not here.

- Q. I might mention that my question to you with respect to this rather long memorandum is going to be limited to the first paragraph on page 1, and the first [Tr. 3351] paragraph on page 4.
  - A. The first on page 4?
  - Q. Yes. The first on page 1 and the first on page 4.
  - A. I have read those paragraphs.
- Q. Will you explain what the meaning of that is? What I am trying to find out is whether or not Douglas was then offering a long-range configuration and that Boeing was not yet able to do so as of the date of that memorandum.
- A. Yes, Douglas was offering the DC-8 with the JT-4 engine, a long-range airplane by comparison to the 707-120.

We were in the process—we recognized that with the availability of the JT-4 engine this presented an opportunity to build a long-range high payload airplane with that engine. We were studying the adaptation of the engine to the existing 120 with wing tanks, et cetera, or a completely new airplane—not completely new, but a modification of the 120 airplane with a larger wing, greater fuel capability,

higher gross weight capability, to take full advantage of the engine.

[Tr. 3352] • • • Q. I show you, Mr. Connelly, Defendants' Exhibit 103 for identification, a memorandum from Mr. Beall to Mr. Wells with a copy to you and others dated December 23, 1955.

It is only the first page that refers to TWA and it sets forth the positions being held for TWA on both the 120 and the 320 series.

- A. This answers a previous question in respect to—in which I stated that we had reserved some positions between the Pan American and foreign airlines for American flag carriers.
  - Q. The earliest is April, 1959, for TWA, is it not?
  - A. That's the 120.
  - Q. That's right.
  - A. The 320 it was November 1959.
- Q. Was this memorandum, so far as you know, purely internal or was it supposed to indicate that these delivery positions had been offered to TWA, or don't you know?

ITr. 3353] A. I don't know. I assume it is internal, although I do know a proposal was made or perhaps several in discussions between Mr. Allen and Mr. Hughes.

So it could have been passed on orally. I do not know.

- Q. You mean at or about the time of the memorandum!
- A. That is correct.
- Q. The delivery positions set forth there for the 120 series are the same as those which appear in the first Tooleo contract for eight planes which was entered into in March of 1956.

The delivery positions, however, for the 320 as set forth in Defendants' Exhibit 103 for identification are not nearly

as good as those which were provided for in the contract which was entered into in March 1959.

Who negotiated the improvement in delivery positions so far as the 320 series was concerned, if you know?

- A. I do not know.
- Q. Do you know whether TWA or Toolco was advised at any time between December 1955 and the time it entered into the contract for the 331s of the preference given by contract to TWA for the 320 series?
- A. I don't know, but if so it would have been [Tr. 3354] communicated by Mr. Allen to Mr. Hughes directly.
  - Q. And you have no knowledge of it?
  - A. I have no knowledge of it.
- Q. I show you, Mr. Connelly, copy of Defendants' Exhibit 105, a memorandum from Mr. Wells to Mr. Beall with copies to various Boeing officials including yourself dated July 24, 1956. This exhibit has been marked in evidence down to the end of the first full paragraph on the second page.

Would you please read it and then indicate when you have done so?

- A. Down to the middle of page-
- Q. I want you to read the whole thing. I say it has already been admitted in evidence down to the end of the first full paragraph of page 2.
  - A. I have read it.
- Q. Do you recall receiving this memorandum at or about the date it is dated?
  - A. I don't recall it, but undoubtedly I did.
- ITr. 3355] • Q. Mr. Connelly, in your prepared statement, on page 6 of it, the fourth paragraph, you state that the earliest delivery positions Pan American could

have obtained from Boeing for six 707-331s, if they had been ordered in July 1959 were one in February 1961, two in March 1961, two in April 1961, and one in May 1961.

Do you see the portion to which I refer?

- A. Yes, sir.
- Q. In connection with making that statement, did you have the records of Boeing checked in any way?
  - A. Yes.
- Q. Do the records show what you set forth in your statement?
- A. Those were the earliest positions we could have quoted on the basis of our schedules at that time.
- Q. I asked you if the records showed what you have set forth in this statement.
  - A. Yes, I would say the records did.

[Tr. 3356] Q. What records are you referring to!

A. Well, in particular I recall that when this question was asked—of course, as you know, this involved the sale of six airplanes by Hughes Tool Company to Pan American. And at the time that transaction was under way we were requested by TWA to quote the earliest position we could quote on the 331s as substitute aircraft and we submitted a proposal.

By the record, I mean that proposal.

Q. Did Pan American at or about that time ask Boeing for delivery dates either in June or July of 1959?

A. I have no recollection of any request for a proposal at that time.

- Q. Do you know if Pan American sought delivery positions from Douglas in June or July of 1959?
  - A. No, I do not.
- Q. Are you sure these were the only delivery positions that were offered to TWA in July of 1959?

- A. I don't know if they were, but they were the earliest positions available at the time this request was made.
- Q. I show you Defendants' Exhibit 114 in evidence, a letter dated July 24, 1959, to Mr. Rummel through Mr. Zak from Boeing Airplane, originally signed by Mr. [Tr. 3357] Spalding, described as manager of contract administration.

I ask if that proposal does not provide for delivery positions two months earlier than those set forth in your statement.

- A. I'd have to relate this in time to when we quoted the prior schedule.
  - Q. What prior schedule?
- A. We gave TWA a proposal for one in February 1961, two in March 1961, two in April 1961 and one in May 1961.
  - O. What makes you think that was prior?
- A. I don't know, but I'd like to see if we made a proposal.
- Q. That's what I asked you, if you made more than one proposal in that month.
- A. Well, I can't answer that. We make proposals to TWA all the time.
- Q. I will show you a later proposal to TWA which is attached to the prepared testimony of Mr. Rummel in this action to Mr. Rummel through Mr. Zak from the same gentleman, Mr. Spalding, dated July 27, 1959, and that is the one whose dates are set forth in your statement.

[Tr. 3358] Why did you use the later one rather than the earlier one?

- A. I have no idea why we did.
- Q. Did you prepare this part of your statement or did you not?
- A. I asked our contracts people to give me the earliest date as represented by the proposals that we were sending out at that time.

Q. The earliest?

A. The earliest delivery positions at the time we received the request from TWA.

Q. Do you think it is a slip then of your Contract Department?

A. It could be.

Q. At any rate, there is no doubt in your mind that you did offer earlier positions two months earlier three days earlier?

A. Apparently we did.

Q. In the light of that, do you want to correct the statement in Paragraph 4 of your prepared statement, Mr. Connelly, to reflect dates two months earlier?

A. On the face of this, I believe a correction is in order.

Q. At the time of this transfer of six planes-

[Tr. 3359] • • • Q. At the time of the proposal for Hughes Tool Company to assign to Pan American the rights to obtain six of the 331s, Boeing gave the consent, did it not, to that transfer?

A. Yes, sir.

Mr. Hayes: I ask that there be marked as Defendants' Exhibit 170 telegram to Hughes Tool Company to C. H. Price dated July 21, 1959, from Boeing Aircraft Company, T. L. Spalding, Manager, Contract Administration.

Q. I show you a copy of a telegram and ask you if you can identify it as the consent given by the Boeing Company to the transfer from Hughes Tool Company to Pan American of the right to acquire six 331s.

A. Yes.

[Tr. 3360] • • • Mr. Hayes: No further questions. The Special Master: Did you have any knowledge at the time of this consent being given?

The Witness: Yes, we did. You mean the discussions between Pan American and Hughes Tool Company? We were informed.

The Special Master: Did you participate in the discussions leading up to the giving of this consent?

The Witness: No, only to the extent of consenting to it, recognizing the problems and-well, I guess asking for certain conditions to be included in respect to the payment for the airplanes.

The Special Master: What were the problems to

which you are referring?

The Witness: Well, we were given to understand it was a matter of finance, ability to pay for the airplanes. That was our understanding.

The Special Master: That Hughes Tool ITr. 3360Al Company would not have been able to pay for them so that you were not really giving up anything!

The Witness: That they were unable to finance the acquisition for themselves.

That was our understanding of the problem.

### [Tr. 3361] \* \* \* By Mr. Sonnett:

Q. Mr. Connelly, I show you Defendants' Exhibit 114 which you saw briefly before the recess, being a copy of a letter dated July 24, 1959, from Boeing, signed by Spalding to Rummel through Edwin Zak on the subject of proposal for the sale of six increased gross weight Model 707-331 aircraft to Hughes Tool Company, bearing a date stamp.

Will you just look at that for a minute? May I advise you—and I think the Special Master will judiciously notice—that that was a Friday, that is to say, the date of the letter?

Would you just read into the record the time and date on which that document was received, according to the stamp at TWA?

- A. 4:00 o'clock on July 28th.
- Q. I show you now a document which I ask the reporter to mark Plaintiff's Exhibit 24 for identification and ask you whether you recognize that as a letter from the same Mr. Spalding of Boeing, dated July 27, 1959, to Mr. Rummel, on the same subject as the preceding exhibit?

#### A. Yes.

(Tr. 3362) • • • Mr. Hayes: As I understand, you have already admitted in evidence—maybe I am wrong—Mr. Rummel's statement, including Annex E, or am I wrong?

Mr. Sonnett: You are correct, and the reason for offering Plaintiff's Exhibit 24 is that this is the original showing receipt stamps which are legible, and the receipt stamps are highly material to the line of questioning you engaged in just before you finished.

The Special Master: We will receive this.

# [Tr. 3363] • • • By Mr. Sonnett:

- Q. Looking at Plaintiff's Exhibit 24 in evidence, will you read the time of receipt as appearing from the stamp on that document and the date of the receipt into the record?
  - A. There are two stamps on it.
  - Q. Read them both.
- A. One says "Engineering, BAC," I assume that would be Mr. Zak, was received on July 27th, at, I guess that's 4:15, or is it—3:45—excuse me.

Then the second stamp is "Received TWA July 28th, at 4:00 p.m."

- Q. Referring to the exhibit before you, is it the fact, Mr. Connelly, that the proposed delivery schedule referred to in that exhibit is the delivery schedule referred to in Paragraph 4 of your sworn statement, which is Plaintiff's Exhibit 3?
  - A. This is Annex E-
- Q. No. Is the schedule in the document which is also marked Annex E and also marked Plaintiff's Exhibit 24, the same schedule as the schedule appearing in Paragraph 4 of your sworn statement?

[Tr. 3364] A. Yes.

- Q. Will you read the first sentence of the document before you, which is the letter dated July 27th?
- A. "We wish to amend and supplement letter proposal 6-1100-2-591 to reflect delivery schedules of the six Boeing Model 707-331 aircraft."

Mr. Sonnett: I ask the Special Master to note both documents were received at TWA-New York at the exact same time.

Mr. Hayes: I am not going to argue that ITr. 3365] point.

#### À-1184

#### Connelly-Redirect

Mr. Sonnett: Then you should not have wasted time on what you did in examination about it.

Mr. Hayes: I will refrain even from comment.

Mr. Sonnett: Good.

The Witness: Mr. Special Master, may I make a statement, please?

The Special Master: Yes, we held you back from

making a statement.

The Witness: I just wanted to correct one thing,

Mr. Hayes.

I said I thought I ought to amend my letter. In view of this letter, I honestly feel that either an error was made between the date of this first one and the second one, or—more unlikely, we sold some airplanes in the interim.

#### By Mr. Sonnett:

Q. In any event, you do not now feel that Paragraph 4 of your statement requires any correction, in light of those documents, do you?

A. No. I failed to read in the first paragraph this

amendatory provision.

- Q. Referring, Mr. Connelly, to your testimony ITr. 33661 generally regarding the contract with Pan American for 320s, which was signed December 19, 1955, do you recall generally your testimony to the effect that the negotiation period preceding the actual signing of that contract in formal negotiation for the contract was relatively short, I think you said something like several weeks?
  - A. That's correct.
- Q. If TWA or Hughes Tool Company had commenced negotiations for 320s with Boeing during that same two-week period preceding December 19, 1955, would TWA

have received substantially equal treatment with Pan American regarding deliveries of 320 aircraft?

- A. I believe they would have.
- Q. Referring, Mr. Connelly, to your statement which is TWA Exhibit 3, page 2, Paragraph 1, and specifically Paragraph 1(a), will you read that paragraph to yourself, and then I will ask you, having read it, whether that correctly sets forth the policy of Boeing at the time, as you knew it then and now know it, and in your opinion would the re-[Tr. 3367] sults stated in Paragraph 1(a) have occurred?

A. My answer is yes, I believe that would have been the case, subject to these other conditions, and that has to do with all of the qualifications that are included here.

- Q. Just to place the dates in your mind, do you recall being examined concerning Defendants' Exhibit 96 and Exhibit 97, being letters respectively to Pan American and to American, and also being examined with respect to Defendants' Exhibit 98, being a letter to United, copies of which I place in front of you, and ask you merely whether you recall your testimony in general concerning those documents?
  - A. Generally, I believe I do.
- Q. No such letter was sent to Mr. Howard Hughes or the Hughes Tool Company or TWA, was it?
  - A. Not to my knowledge.
  - Q. Do you why not?
- A. As I stated before, there was—appeared to be a [Tr. 3368] lack of any positive interest in this particular airplane.

- Q. Was that the conclusion which Boeing had at that time on this subject matter?
  - A. Yes.
- Q. What were the reasons that led Boeing to the conclusion at that time which conclusion you have just stated?
- A. Well, as I previously said, there was no positive interest on the part of Hughes Tool to enter into negotiations to purchase this aircraft, unless they do be assured a large quantity of the very first airplanes to be delivered.
- Q. You have previously referred to reports received by you from others in Boeing to the effect that Mr. Hughes was demanding either or perhaps at different times either the first 50 or the first 40 or the first 33 of the Boeing 707 aircraft. Do you recall your references to that subject previously?
  - A. Yes, this was hearsay.
- Q. Will you tell us, as fully as you can, the period of time involved and who said what to you in that connection?

Tr. 3369] • • • A. Well, the time involved was prior to the time we sent out these proposals which were the first firm offerings that I recollect we made. And I would say that the information reported to me in the main came from Mr. Beall.

It is possible that either Mr. Allen or Mr. Wells may have had some comments to make. But I think in the main I recall Wellwood Beall as being the one who had the greater number of contacts with Mr. Hughes.

[Tr. 3370] • • • Q. Do you recall, Mr. Connelly, what response was made by Boeing or any of its representatives to Mr. Howard Hughes when such proposals were advanced by Mr. Hughes to Boeing?

The Special Master: I think that is beyond the pale.

Q. I show you Defendants' Exhibit 168 and I show you Defendants' Exhibit 169, both in evidence, being memoranda of telephone conversations between Mr. Beall and Mr. Howard Hughes on September 23, 1955, and October 31, 1955, and ask you, Mr. Connelly, do you know whether or not there exists in Boeing or any other place, for that matter, any similar memoranda of other conversations with Mr. Hughes on this subject?

[Tr. 3371] A. If so, I have no knowledge of it.

Q. I refer you, Mr. Connelly, to Defendants' Exhibit 168, page 2, paragraph marked 4, which reads entirely as follows:

"Upon query Hughes stated that he absolutely had no deal outstanding with Convair because of Air Force pressure on Convair to do more and better on certain Air Force projects of Convair. He said that he had worked secretly for six months with Convair on the deal for 30 jet transports, the first of which is to be delivered in October 1958. He stated that the detailed specifications had been completely negotiated, a formal contract been agreed upon by both parties and the financial arrangements made when the 'rug was jerked out from under the project!'"

I ask you whether prior to your receipt of a copy of this memorandum of September 23, 1955, you had information concerning Mr. Hughes or the Hughes Tool Company's negotiations with Convair on that subject.

A. I believe I previously testified to the effect that we knew that they had technical people in San Diego in dis-

cussions with Convair. We had every reason to believe that there were negotiations between Mr. Hughes and Convair.

Q. Referring to Defendants' Exhibit 169, the memorant Tr. 33721 dum of October 31, 1955, concerning a telephone conversation with Mr. Hughes, and in particular to Paragraph 4, reading as follows:

"I asked him if he wanted a delivery quotation, but he said he would wait until after our American deal was settled one way or the other. If American does not buy from us, he might be tempted to talk to Trippe in matching delivery schedules."

You received a copy of that memorandum at or about the date it bears, October 31, 1955; is that correct?

A. Yes.

Q. Do you recall how long after that date you had any indication from Mr. Hughes, directly or indirectly, to the effect that he or the Hughes Tool Company or TWA were interested in proceeding with some exploration of a possibility of acquiring 707s?

A. I personally didn't have any knowledge until I was assigned to the negotiations, which was between Christmas and New Year's 1955.

Q. I show you Defendants' Exhibit 103 in evidence, which is a memorandum dated December 23, 1955, on the subject of Model 707 delivery schedules, signed by R. L. Bell, and invite your attention to the first sentence which reads as follows:

(Tr. 3373) "In accordance with TWA's request, we are holding firm for TWA the following Model 707 delivery positions."

Do you know who made that request on behalf of TWA or the request at least referred to in that memorandum?

A. I don't know who made the request, but I can only assume, inasmuch as all the discussions were personally conducted by telephone at that time between Mr. Allen and Mr. Hughes, it was requested by Mr. Hughes, but I don't know.

Mr. Hayes: I move to strike the assumption, Mr. Brownell.

The Special Master: We will leave it in and give it such weight as it deserves.

#### By Mr. Sonnett:

Q. Referring further to Defendants' Exhibit 103, indicating that Boeing was holding firm for TWA the following Model 707 delivery positions, it appears, does it not, that the delivery positions referred to relate both to the 120 and to the 320 series of aircraft?

A. They are segregated into two groups, one for the 120 and one for the 320.

ITr. 3374] Q. So far as you know, did Mr. Hughes or anyone else acting on behalf of the Hughes Tool Company or purporting to act on behalf of TWA, request Boeing at any time prior to the approximate date of this memorandum, December 23, 1955, to hold firm any delivery positions for either 120 or 320 aircraft?

- A. Prior to the date of this memorandum?
- Q. Correct.

A. I would assume that certainly a request was made, again I would have to say probably Mr. Hughes to Mr. Allen to hold these positions on the 120 aircraft, and preceding that I would assume that Mr. Allen had said we had these available for him.

But on the 320, I can't answer the question, because I don't know.

Q. Following the date of this memorandum, December 23, 1955, there were, in fact, negotiations, serious and in earnest negotiations in which you participated with TWA representatives, were there not?

The Witness: What was the last part of that question?

(The question was read.)

A. After this date?

Q. Yes.

[Tr. 3375] A. Yes, between Christmas and New Years, 1955.

Q. So that within a matter of a few days after the date of this memorandum, to wit, within a few days after you held firm for TWA the delivery positions reflected in this document, serious negotiations were conducted and when were they concluded in any respect?

A. Well, we concluded the negotiations between the 29th and the 31st of December. I can't recall when the agreement was signed, but that to us was of no importance when we were in serious negotiation on those airplanes.

Q. Is it a fair statement, Mr. Connelly, that within ten days to two weeks after Boeing held firm for TWA certain delivery positions, not only had a negotiation been conducted but you had reached substantial agreement on a contract, although the formal contract was not yet signed!

Mr. Hayes: Could I have that question back?

The Special Master: 320s†

Mr. Sonnett: 120s.

The Special Master: Will you read the question back?

(The question was read.)

[Tr. 3376] A. The formal letter contract?

#### A-1191

# Connelly-Redirect

- Q. Yes.
- A. That is correct.
- Q. Referring, Mr. Connelly, generally, to your earlier testimony, concerning the problems which arose in respect of a variation in configuration of aircraft, do you have that testimony generally in mind? You can put that document away.
  - A. I would like to make one comment if I may.
  - Q. Go right ahead.

The Witness: On this schedule for 320 airplanes, Mr. Brownell, you asked a question previously as to what did we do if anything with positions in between those that were first quoted to Pan American on the 320 and what happened as far as the foreign customers were concerned. And I believe I'm correct in saying I testified that we had reserved positions for American flag carriers.

I just want to point out that this bears this out. This is not all our positions by any means and probably we were holding positions for Northwest and Eastern, National, other airlines. I just wanted to get that in because I didn't have [Tr. 3377] anything else to demonstrate it.

Mr. Hayes: What is the number of that exhibit, please?

Mr. Sonnett: 103.

Q. Let me ask you do you have in mind, at ten minutes to six on this long day and I will try to finish this very quickly, generally your prior testimony on the subject of problems that arose in respect of variations in configuration of aircraft and the need for Boeing to have control of its production program.

Do you have that generally in mind?

A. I believe so.

- Q. Would you briefly summarize for us how a standard specification or configuration is arrived at in the airplane manufacturing industry?
- A. Well, I can only speak for Boeing, but in our case, of course, our designers have their ideas as to what the configuration of the airplane should be, what the equipment should be for incorporation in that particular model aircraft.

We are also very interested in all the inputs we can get from the operating airlines as to what their ideas are.

Eventually, of course, we must make the de-ITr. 33781 cision as to what that airplane should be. It is impossible to incorporate all the airline desires. We do our best to try to come up with what we believe will most satisfactorily fulfill the requirements of the airline.

And we fix upon that at some time as our basic specifica-

I will have to admit we have never built a basic specification airplane, but at least we must have a base line to start from.

- Q. Is it a fair statement then that the so-called standard 707 specification that Boeing is proposing in the summer of 1955 reflected not only Boeing's thinking but that of those of its prospective customers who saw fit to participate in discussions on the subject?
  - A. I believe the answer to that is yes.
- Q. Had TWA participated in such discussions under Boeing's practice would their proposal have been considered just like those of Pan American or American or anybody else?
- A. I don't like to say had they. I think they did contribute to some degree. Our engineering people were working with the TWA engineers and I'm certain that we had some inputs from TWA.

[Tr. 3379] As to participation, I cannot recall that TWA participated to the same degree as some of the other carriers, namely Pan American and American Airlines, and United Airlines.

Q. Then would it be a fair statement that because of what you have just mentioned, the specification reflected more of the input of other airlines than it did of TWA's input?

A. I don't think one can say yes or no to that for the simple reason that it is quite possible that TWA could have brought up some items which in the overall picture were just as significant as those who participated for a longer period of time.

Q. Let me put it another way. Boeing, I take it, was in fact interested in the input of all knowledgeable airlines with respect to this question?

A. Right.

Q. To the extent that TWA participated, its views were and would have been considered just as carefully and objectively as the views of Pan American or American or United or anybody else—

A. Yes.

Q. —is that a fair statement?

A. Yes.

[Tr. 3380] Q. You made some reference in your prior testimony to some problems relating to air conditioning.

Will you summarize for us what the problem was, what developed?

A. Yes. Air conditioning was one of the items that was the subject of many discussions with all the airlines. There were many proponents of what is known as the air cycle system. And some of the airlines preferred a freon system.

Need I describe what these two systems are?

Q. No. Just indicate that they are different kinds of systems.

A. We felt that the air cycle system in view of the timing of the program and the more proven reliability up to that period, the stage of development at that time, offered the better solution, and this was concurred in by the majority of the airlines.

American Airlines strongly favored a freon system.

And it was agreed that we would enter into a change with American Airlines to put a freon system in. The selection of that system we had a strong voice in. The final decision has to be ours as to what equipment goes in the airplane.

[Tr. 3381] At that time, the Air Research Company had a unit which as I understand had been developed not specifically for an airplane as large as the 120 but which had had considerable service experience and had proven to be reasonably reliable and they were further developing the item. And it was finally agreed that we would put that system in the American airplane.

TWA also preferred a freon system. They were working at that time with Convair and United Aircraft, the Hamilton Standard Division of United Aircraft, for a freon system for the 880. Naturally they would like to have that unit installed in the 707 for purposes of standardization, so they would only have one type of equipment to contend with.

We agreed in light of the estimates that were given to us by the Hamilton Standard people and the strong desire of TWA to go forward with that system for TWA.

Later in the program it became very clear that the possibility of Hamilton Standard meeting their delivery dates with a satisfactory item was exceedingly questionable, and TWA, being concerned about the effect it would have on

the delivery of their airplanes, agreed to change to the same basic Air Research freon system [Tr. 3382] that American had. So that we finally ended up with the Air Research program in both planes.

Q. May I show you these three documents, and ask you whether you can identify them, and if so, we will then have them marked and offer them?

A. You will understand I am not a technical man. I am giving you my understanding of the situation.

The Witness: This was a change order that was negotiated in respect to the change from the Hamilton Standard to the—no, I'm sorry. This is a master change which provides for the Hamilton Standard system in lieu of Air Research in accordance with TWA's request.

- Q. There is a second one.
- A. These are both the same.
- Q. They are both the same changes but on different aircraft, I think you will find.
- A. Oh, yes, one is for the 707-131 and the other one is for the 707-331.

[Tr. 3384] Mr. Hayes: May we have the numbers of this?

Mr. Sonnett: It is Plaintiff's Exhibit 25.

- Q. Referring to the change proposals which are part of this exhibit, I note that each of the change proposals states, does it not, "effect on delivery schedule none," is that correct?
- A. I read it on the top sheet here, no effect on delivery. Not in the change order itself. It is there.

- Q. It does appear from this exhibit, does it not, that the change order on Hamilton Standard turbo compressors about which you have testified was made subsequent to the initial execution of the initial contracts relating to the aircraft in question, these being dated December 1956?
  - A. Yes, sir.
- Q. Do I understand correctly, Mr. Connelly, that at some time after December 28, 1956, there was a further change made in this regard and TWA went back to the initial type of air conditioning?
  - A. To the initial type?
  - Q. Yes.
- [Tr. 3385] A. I ask you that because I can't remember whether they had the American freon system, the Air Research unit or the air cycle system to begin with but whatever it was—
- Q. Whatever it was they went back to the initial system, is that correct?
- A. No, they went back to—they changed to the Air Research freon system. I can't remember whether they started with that system or with the air cycle system.
- Q. They wound up with the same system that for example was in American's planes?
  - A. That's correct.
- Q. I believe you testified and just so that we are clear about it in the record, did the change on the air conditioning systems result in any delay of delivery scheduled by the contracts for any of the TWA aircraft?
  - A. I don't believe so.
  - Q. With respect to this-

Mr. Hayes: Could I have that question and answer back?

(The question was read.)

Mr. Hayes: You are referring to the changes set forth in TWA Exhibit 25?

Mr. Sonnett: That's correct.

ITr. 33861 The Special Master: And the later one?

Mr. Sonnett: They are both the same date. And the later one, that's correct.

The Witness: When I say I don't believe so, I am referring to contract schedule.

- Q. Referring to your statement, Mr. Connelly, which is Plaintiff's Exhibit TWA 3, page 4, paragraph (f), about which you were examined earlier, would you just glance at that please?
  - A. Yes, sir.
- Q. Let me ask you, did anybody purporting to act on behalf of TWA indicate to you that any non-essential configuration change was more important to the Hughes Tool Company or to TWA than early delivery positions?

A. My own opinion would be that they would have held early delivery to be more important.

Mr. Hayes: I move to strike the answer as not responsive. The question was did anybody indicate to him and we get an opinion.

The Special Master: I guess you better rephrase it.

Mr. Sonnett: Would you read the question?

The Special Master: I think the objection is well taken.

[Tr. 3387] Mr. Sonnett: I think the question called for a factual answer.

Q. That is to say, have you any recollection any TWA alleged representative ever indicated to you that any non-

essential configuration change was more important than early delivery positions?

- A. I can't recall that point ever coming up.
- Q. Do you recall any configuration change proposed by the Hughes Tool Company or its representative, whether or not on behalf of TWA which, in fact, affected early delivery positions to TWA or to the Hughes Tool Company!
  - A. You mean as to actual deliveries?
  - Q. Yes.

Mr. Sonnett: Read the question.

- A. Again I ask you, you mean actual delivery?
- Q. I will ask it in two parts. Maybe it is my use of the word early delivery positions that is throwing you.

Let me be specific first.

Did the air conditioning change about which you have testified or changes affect any of the early delivery positions of TWA, scheduled delivery positions?

A. The contract scheduled delivery?

[Tr. 3388] Q. Right.

- A. No, by virtue of the change they made back to the other system.
- Q. Did any of those changes, the air conditioning changes affect actual deliveries of any aircraft to Hughes Tool Company by Boeing?
  - A. I believe they did to some degree on the 120 series.

In other words, we met contract and possibly we—and we bettered contract deliveries. I remember there were a good number of the airplanes on the field, and we had to concentrate a good deal of efforts on those airplanes.

- Q. Do you recall how many airplanes were involved in that problem?
  - A. No, sir, I do not.

- Q. Do you recall how much loss in terms of accelerated delivery was occasioned thereby?
  - A. No, I do not.
- Q. Would it have been as best you recall longer than two, three, four weeks?
  - A. I can't answer the question.
- Q. You have throughout your cross examination, Mr. Connelly, been asked a whole series of questions [Tr. 3389] about placing orders. Will you state whether in any case any airline ever placed orders for aircraft without a period of negotiation as you characterize them good faith, sincere negotiation having preceded at least the first order for any such aircraft?
  - A. I cannot recall any.

Mr. Sonnett: I have nothing further now.

# By Mr. Hayes:

Q. You may recall you mentioned on redirect, Mr. Connelly, that at the time offers were made by Boeing to Pan American, American and United, no offer was made to Hughes Tool Company, and you gave as your reasons, if I recall your testimony, Mr. Connelly, that there was no interest on the Hughes Tool Company part and no particular interest on Boeing's part as to Hughes Tool Company or TWA because they wanted a large quantity of planes initially.

Do you recall that testimony of yours?

A. I think I said to the best of my knowledge and belief as far as any offers might have been made.

ITr. 33901 Q. Do you know what the opinions of other officials in Boeing were as to why no offer was made to Hughes Tool Company or to TWA?

A. I'd have to say that it was made abundantly clear that most of our people were convinced that there was no positive interest on the part of the Hughes Tool Company in moving forward prior to such time as they did in negotiating or acquiring 707-120 airplanes.

Q. Was that only because they wanted to have a large number of planes?

A. That was one of the conditions that was reported to me.

Q. Was it that the Boeing people all knew that at that very time TWA and Toolco were actively negotiating with Convair? Was that a contributing factor toward the decision not to send an offer to TWA?

A. Only in that it lent support to the fact that there probably was no positive interest on the part of Hughes Tool Company in 707s.

Q. Do you mean by that answer that the fact that they were negotiating with Convair as you knew persuaded Boeing that TWA and the Tool Company were not interested in buying the Boeings at that time?

[Tr. 3391] A. We—yes, we felt that they were more interested in going forward with Convair than they were with Boeing.

Q. You mentioned that when it came to the international, the negotiation was a very short negotiation and I think on redirect you said several weeks.

How long had the negotiation of the detailed specifications taken on the international plane?

- A. I would just guess four, five weeks.
- Q. How long had Pan American been working with Boeing with respect to the international plane?
  - A. From the very inception.
  - Q. The beginning?
  - A. Yes.
- Q. Had there been exchanges of information and views and opinions from the beginning between Pan American and Boeing with respect to the International plane?
- A. They were strongly urging us to go forward with such an airplane because it better met their requirements.
  - Q. You were not resisting the urging?
- A. No, because as time went on we saw it was necessary to have such an airplane.

ITr. 33921 Q. When you came to the mere writing of the specification a lot of work had already been done between Pan American and yourself, had it not?

- A. I wouldn't say a lot of it, but considerable had been done, yes.
- Q. That went back long before a few weeks prior to December, 1955, did it not?

- A. Well, as I mentioned, in the order of five or six weeks.
- Q. I thought you said that they were interested in the international planes from the very beginning.
- A. From the very beginning of the inception of that airplane as far as we were concerned in our own planning.
- Q. How long before that had Pan American been doing any work with Boeing with respect to an international plane?
- A. From the very first time a JT-4 engine appeared it would be available.
- Q. That was considerably before December of 1955, was it not?
- A. Well, the problem involved more than the availability of the engine in a physical sense. It was whether or not the government would permit the engine to be used in a commercial airplane.

[Tr. 3393] Q. The expectation that it would be permitted to be used went back at least to the summer of 1955, did it not?

- A. I can't be certain as to the timing, Mr. Hayes.
- Q. But it was months before December 1955 when it was expected that the JT-4 engine would be made available, was it not?
- A. As a matter of fact, it was considerably after we had embarked on the program, both we and Douglas that the engine was cleared.
- Q. I did not ask you when it was cleared. That it was expected that it would be cleared, Mr. Connelly.
- A. As I recollect, it was a few months but I wouldn't go beyond—
  - Q. It was a matter of a few months at least, wasn't it!
  - A. A few months when?

#### A-1203

#### Connelly-Recross

- Q. Before December 1955.
- A. Before December 1955?
- Q. Yes.
- A. Yes.
- Q. With respect to these two delivery position letters, do you have those before you?

Mr. Hayes: Will somebody put them in [Tr. 3394] front of Mr. Connelly.

The one dated July 27th is Annex E and it is also TWA Exhibit 24, I believe. Am I right on that?

Mr. Sonnett: Yes.

Mr. Hayes: The one dated July 24th is Defendants' Exhibit 114.

- Q. Do you have them before you, Mr. Connelly?
- A. Yes.
- Q. You gave as a conclusion of your testimony in this regard—by the way, you reviewed your testimony in this regard with Mr. Sonnett, during our recess, did you not, with respect to these documents?
  - A. Yes, I did, on these two documents.
  - Q. Yes.
  - A. That is correct.
- Q. You gave us your conclusion at the end of your testimony as I remember it that you honestly feel that either an error was made or that Boeing had sold the airplanes to some other customer which you thought was the more likely explanation?
  - A. More unlikely.
  - Q. I misunderstood you then.
  - A. More unlikely.

Tr. 3395] Q. What error was made by whom? Have you any knowledge on the subject to begin with or are you speculating now?

- A. I'm not speculating because these things don't happen this way unless either one of those events have happened. An error was made in the schedule review or as I say more unlikely maybe we did sell some airplanes. I can't remember.
  - Q. You have no recollection on the facts of the situation!
  - A. No, sir.

I have to say that any time we supplement, amend and supplement, there is a reason for it.

- Q. I don't doubt that. I am not questioning that.
- A. I know you are not.
- Q. The fact of the matter is that both these letters were sent, were they not?
  - A. Yes, that's very apparent.
- Q. They would just as well have been sent to Pan American if Pan American had requested the information!
  - A. That is correct.
- Q. If the July 24th letter had gone to Pan American and been accepted by Pan American, you would have felt bound, would you not?

(Tr. 3396) A. We would have been in a bad way.

- Q. You would have been bound by it as a contract, would you not?
  - A. Or the same with TWA, that is correct.
  - Q. That is right, either one?
  - A. That's right.
- Q. So that in fact Boeing did make an offer of two months earlier delivery positions than those which appear in TWA Exhibit 24?

Mr. Sonnett: I always thought as a matter of law which we seem to be debating that an offer is revokable at least until it is received. It is not an offer. Here we have two documents received at the identical time.

### By Mr. Hayes:

- Q. As a matter of fact, they were delivered through Mr. Zak, were they not, both of them?
  - A. They were both routed through Mr. Zak.
- Q. There is no stamp on Defendants' Exhibit 114 showing when Mr. Zak got it. There is a stamp showing when it arrived at some TWA office likely in Kansas City. TWA Exhibit 24 shows it was received at Mr. Zak's office the day it is dated, July 27th.

Was it the normal practice when a communication ITr. 33971 was going to TWA or to Mr. Rummel specifically through Mr. Zak to make personal delivery to him right at the plant?

- A. I can't answer that question. I don't know.
- Q. But it is obvious that he received it the same date it is dated, is it not?
  - A. Yes.
- Q. It is fair to assume that he would have received it July 24th on the day it was dated?
  - A. That's reasonable.
- Q. I put the question to you again. I think you answered it that if it had been accepted right then and there you would have had a contract on your hands.
  - A. And in serious difficulty.
- Q. Did you have both these letters before you when you prepared your prepared statement?
- A. No, sir, I had not—I merely asked our contracts people to give me as best they could reconstruction of the records what the earliest positions would have been had we been requested to supply positions.
- Q. Who prepared the text of Paragraph 4 of your statement, if you know, Mr. Connelly?

The Special Master: Your prepared statement.

Tr. 33981 A. Paragraph 41

Q. That's right, which appears on the last page, whatever the last page is.

A. I think this is part of the original draft which was received by Mr. Olsen first from Mr. Rummel and Mr. Dunham and referred down to me, referred by Mr. Olsen's office to me.

Q. So that it was prepared by someone in New York acting on behalf of TWA in the first instance?

A. As far as that original draft was concerned, that is correct.

- Q. Did it read as it does when you first received it?
- A. I know he made many revisions in it.
- Q. I mean this particular paragraph.

A. I can't recall. We made many revisions in the whole thing. I can't recall whether this was changed or not.

Q. Did you ask to have the documents which supported Paragraph 4 shown to you?

A. No, I asked our people to check what were the earliest positions we had available at that time from such records as we had available bearing upon that time.

Q. Were you told the purpose of Paragraph 4 Tr. 33991 specifically by Mr. Rummel or anybody else for what purpose was—it going to be used by TWA in this lawsuit!

Mr. Sonnett: You mean going beyond submission as part of his testimony?

- Q. Were you given any purpose for Paragraph 4!
- A. I can't remember being told what the purpose was
- Q. I think you testified in response to some questions by the Special Master that you were advised of the negotiations that were going on between the Tool Company and Pan American?
  - A. Yes.
  - Q. Do you know when they began?

- A. I assume it was around this period of time in here because we were asked for a proposal and I think I did testify that we gave TWA a proposal. Well, this is it.
- Q. The last exhibit we put in through you was the consent by Boeing to transfer from Hughes Tool Company to Pan American of the right to acquire the six 331s, and Boeing's consent refers to the agreement with Pan American under date of June 25, 1959.

If you were aware of the negotiations, did you know that they went back to June 1959?

[Tr. 3400] A. The date means nothing to me.

- Q. But you were kept informed, Boeing was, of the fact that they were negotiating when they were negotiating?
- A. We were informed at some time. I don't know whether it was at the beginning or the end or the middle.
- Q. Did you inquire as to what delivery positions would have been quoted to Pan American at the end of June, 1959?
  - A. I had no occasion to.
- Q. Because the text that was supplied to you set forth July 1959, is that right?
  - A. No.
  - Q. What other reason?
  - A. I'm not certain I understood the question.
- Q. You said you did not inquire as to what delivery positions might have been available in June of 1959.

I asked you if the reason for that was that the text—you said you had no occasion to do so—if the reason that you had no occasion if that the prepared text that was submitted to you had the month July 1959?

- A. Well, I only checked these figures. I didn't-
- ITr. 34011 Q. That is all you did?
- A. That's all.

Q. You did not go back to see when the agreement might have been made and when if Pan American wanted to get six 331s it might have asked for delivery positions?

A. No.

Mr. Hayes: That is all.

Mr. Sonnett: I think there is some confusion in terminology.

# By Mr. Sonnett:

Q. You have referred to statements made to you by Boeing people concerning Mr. Hughes' statements in 1959 to the effect that he wanted 50 or 40 aircraft if he could get them ahead of anybody else; is that correct?

Mr. Hayes: That has been covered five times. Do we have to go over it again, Mr. Brownell?

Mr. Sonnett: Yes, we do, in light of the confusion and your words which I am going to clear up in one or two questions.

A. Yes, I believe I testified to that.

Q. If Mr. Hughes had said in the summer of 1955 he wanted to buy fifty 707s or forty 707s but he had not ITr. 34021 imposed the condition of wanting them ahead of any-body else, would you have sold him the aircraft and would you have given him equal treatment on deliveries with others ordering at or about the same time?

A. We would have been delighted to.

Q. You would have been very happy to sell another fifty aircraft, wouldn't you, or forty?

A. Certainly.

Mr. Hayes: With Pan American or American getting the preferences. That is fine.

Mr. Sonnett: I have nothing further.

# INDEX

# Volume I

List of Relevant Docket Entries	A-x
TWA Complaint [Doc. 1]	A-1
Order Referring This Action to Judge Metzner for All Purposes, dated August 31, 1961 [Doc. 42]	A-33
Opinion and Order of December 5, 1961 [Doc. 50]	A-35
Pretrial Order, February 7, 1962 [Doc. 59]	A-36
Toolco's Answer and Counterclaims [Doc. 63]	A-41
Holliday's Answer [Doc. 83]	A-99
Pretrial Order, July 12, 1962 [Doc. 101]	A-116
Pretrial Order, September 21, 1962 [Doc. 122]	A-118
Pretrial Order, January 10, 1963 [Doc. 144]	A-122
Pretrial Order, January 19, 1963 [Doc. 146]	A-127
Opinion and Order of Special Master dated January 22, 1963, Exhibit C to Bromley Affidavit dated February 15, 1963 [Doc. 179]	A-133
Exhibit A to the Affidavit of John F. Sonnett, dated February 1, 1963 [Doc. 166]	A-143
Exhibits B and C to the Affidavit of John F. Sonnett, dated February 1, 1963 [Doc. 167]	A-226
Pretrial Order, February 1, 1963 [Doc. 168]	A-253
Opinion and Order, February 7, 1963 [Doc. 173]	A-255
Toolco's Notice of Position, dated February 8, 1963 [Doc. 174]	A-268
Transcript of Pretrial Hearing, February 8, 1963 [Doc. 188]	A-270
Transcript of Pretrial Hearing, May 2, 1963 [Doc. 204]	A-309

	PAGE
Opinion and Order, dated May 3, 1963 [Doc. 191]	A-317
Opinion and Order of May 3, 1963 Granting Additional Defendants' Motion to Dismiss (memorandum endorsed on motion papers dated February 15, 1963) [Doc. 179B]	A-323
Judgment of the Court of Appeals on Interlocutory Appeal, Entered July 10, 1964 [Docket No. 28405] [Doc. 478]	A-324
Judgment of the Court of Appeals Affirming Dismissal of the Counterclaims, Entered July 10, 1964 [Docket No. 28406] [Doc. 479]	A-326
Opinion of the Court of Appeals in Dockets No. 28405 and No. 28406 [Doc. 478]	A-328
Opinion and Order of Special Master J. Lee Rankin, dated July 30, 1965 [Doc. 481]	A-357
Opinion and Order of Judge Metzner, dated November 16, 1965 [Doc. 487]	A-396
Transcript of Hearing Before Judge Metzner on December 30, 1965 [Doc. 498]	A-400
Opinion and Order of Judge Metzner Denying Defendants' Motion for a Pre-Hearing Order, dated January 4, 1966 [Doc. 496]	
Order by Judge Metzner of January 4, 1966 Designating Herbert Brownell as Special Master in Place of J. Lee Rankin [Doc. 497]	
Volume II	
Excerpts from Testimony at Damage Hearing of Robert W. Rummel [Docs. 554-2 through 554-10]	A-425
Testimony at Damage Hearing of John B. Connelly [Doc. 554-11]	A-977

# A-iii

# Volume III

	PAGE
Excerpts from Testimony at Damage Hearing of Edward J. Morehouse [Docs. 554-13, 554-14]	A-1209
Excerpts from Testimony at Damage Hearing of Edward Wemple [Docs. 554-15 through 554-18, 554-32]	
Excerpts from Testimony at Damage Hearing of John C. Biegler [Doc. 554-19]	A-1527
Volume IV	
Excerpts from Testimony at Damage Hearing of Gene M. Woodfin [Docs. 554-23, 554-24]	A-1567
Excerpts from Testimony at Damage Hearing of Nathan S. Simat [Docs. 554-25, -26, -27, -28, -30, -31]	A-1575
Excerpts from Testimony at Damage Hearing of L. John Eichner [Docs. 554-31, -32]	A-1727
Testimony at Damage Hearing of Van Court M. Hare, Jr. [Doc. 554-32]	A-1773
Excerpts from Pretrial Deposition of Robert W. Rummel [Docs. 224, 225, 226]	A-1797
Excerpts from Pretrial Deposition of Charles C. Tillinghast [Docs. 210 through 222]	A-1850
Excerpts from Pretrial Deposition of Emmett O. Cocke [Docs. 228, 231, 233, 235]	A-1913
Jones v. Uris Sales Corp.—Master's Report [not a part of the Record herein]	A-1934
Volume V	
Notice of Filing of Report of Special Master dated September 21, 1968 [Doc. 509]	A-1965
Report of Special Master, Filed September 21, 1968 [Doc. 508]	A-1966

	PAGE
Transcript of Pretrial Hearing Before Judge Metz- ner, September 19, 1962 [Doc. 129]	A-2391
Portions of Transcript of Discovery Proceedings Before Special Master J. Lee Rankin, October 25, 1962 [Doc. 226]	
Transcript of Pretrial Hearing Before Judge Metzner, October 29, 1962 [Doc. 184]	
Notice of Motion by Toolco, December 4, 1962, for Leave to Depose Sessel and Wadsworth [Doc.	A-2461
Transcript of Proceedings Before Special Master J. Lee Rankin, December 14, 1962 [Doc. 237]	A-2462
Transcript of Proceedings Before Special Master J. Lee Bankin, December 28, 1962 [Doc. 237]	A-2514
Transcript of Pretrial Hearing Before Judge Metz- ner, January 9, 1963 [Doc. 185]	A-2523
Transcript of Proceedings Before Special Master J. Lee Rankin, January 14, 1963 [Doc. 237]	A-2571
Notice of Motion by Toolco, January 14, 1963 [Doc 145]	. A-2574
Transcript of Pretrial Hearing Before Judge Metz ner, January 17, 1963 [Doc. 186]	-
Notice of Motion by Toolco, January 22, 1963 [Doo	A-2602
Transcript of Proceedings Before Special Master J. Lee Rankin, January 23, 1963 [Doc. 237]	A-2603
Notice of Motion by Toolco, January 25, 1963 [Do	e. A-2615
Transcript of Pretrial Hearing Before Judge Met ner, January 28, 1963 [Doc. 187]	z- A-2616
Letter of Chester C. Davis to Judge Metzner, January 29, 1963 [Doc. 448]	n-

# A-vii

		PAGE
Le	tter of Chester C. Davis to Special Master J. Lee Rankin, February 4, 1963 [Doc. 458]	A-2645
Le	tter from John F. Sonnett to Chester C. Davis, February 5, 1963 [Doc. 459]	A-2647
No.	otice of Motion by Tóolco, February 6, 1963 [Doc. 170]	A-2648
Aff	idavit of Nazeeh Habashy, February 6, 1963 [Doc. 172]	A-2649
Tr	anscript of Pretrial Hearing Before Judge Metz- ner, Faruary 6, 1963 [Doc. 187]	4
Aff	idavit of Bruce Bromley, February 15, 1963 [without exhibits] [Doc. 179]	
Aff	idavit of William C. Chanler, February 15, 1963 [Doc. 179]	
Ore	der to Show Cause dated February 16, 1963, and Affidavit of John F. Sonnett, February 15, 1963 [Doc. 180]	
Tra	anscript of Pretrial Hearing Before Judge Metz- er, February 21, 1963 [Doc. 189]	
Oro	der of the Court of Appeals for the Second Cir- uit dated June 6, 1963, Granting Leave to Appeal and Staying Damage Hearing Pending Appeal	
Ord	ders of the Supreme Court of the United States, lated November 16, 1964 Granting Writs of Cer- liorari	
Ord I	ders of the Supreme Court, dated March 8, 1965, Dismissing the Writs of Certiorari as Improvi- ently Granted in <i>Hughes Tool Company et al.</i> v. Frans World Airlines, Inc., Nos. 443 and 501	
Opi 19 M	nion of the Court of Appeals dated September 1, 971, in Docket Nos. 34902, 35114, Affirming with fodifications the Judgment of the District ourt	

	PAGE
Orders of the Court of Appeals, dated September 28, 1971, Denying Petitions for Rehearing and Rehearing in banc	
Volume VII	
	PAGE
Excerpts from Transcript of Deposition of Charles C. Tillinghast, Jr. [Excerpts from Docs. 54, 21, 211, 216, 221]	A-2800
Vol. 11 of Defendants' Exhibits to Deposition Charles C. Tillinghast, Jr. (consisting of Ehibit 11, with subparts 11-A through 11-T, inclusive) [Doc. 238]	u- A-3220
Opinions and Orders of the Civil Aeronautics Boa with respect to the Hughes Tool Company—TW Control Belationship, as follows:	rd /A
<ul> <li>(a) CAB Opinion and Order No. 3210, October 17, 1944 (officially reported at 6 C.A. 153) [not a part of the Record herein]</li> </ul>	А-3297
(b) CAB Order No. 4437, January 26, 1946	A-3307
(c) CAB Order No. E-922, October 29, 1947	A-3309
(d) CAB Opinion and Order No. E-1735, Ju 30, 1948 (officially reported at 9 C.A 381) [not a part of the Record herein]	nne B. A-3311
(e) CAB Opinion and Order No. E-4701, tober 6, 1950 (officially reported at C.A.B. 192) [not a part of the Rec herein]	Oc- 12 ord A-3333
(f) CAB Opinion and Order No. E-16195, cember 29, 1960 (officially reported at C.A.B. 1363)	De- t 32

# Excerpts From Testimony at Damage Hearing of Edward J. Morehouse

[Tr. 3864] Edward J. Morehouse, called as a witness by defendants, being first duly sworn by the Notary Public (William Blitz), testified as follows:

Mr. Leisure: Is there to be an offer of any exhibits at this point?

Mr. Sonnett: Mr. Brownell, we now offer as the direct testimony of the witness exhibits which have been heretofore marked, being the Parts I, II and III of the report on the financing of TWA prepared by this witness and others at Harriman, Ripley.

Mr. Leisure: For the record, these are TWA Exhibits 5, 5A, 5B and 5C. Is that correct, Mr. Sonnett?

Mr. Sonnett: Yes, together with the affidavit of Mr. Morehouse, which is 5, these are 5A, 5B and 5C.

I would suggest that for mechanical convenience we mark later in the day the errata sheets and additions as 5D.

Mr. Leisure: If your Honor please, we have filed written objections to the exhibits now tendered, and we stand on those objections and reassert them now.

The Special Master: I will reserve decision.

[Tr. 3865] Mr. Leisure: May I proceed, your Honor?

The Special Master: Yes.

# Examination by Mr. Leisure:

Q. Mr. Morehouse, would you look at your report, which is TWA 5A, at Part I? You will find that there is a letter there addressed to the Cahill firm, which is dated May 2nd, and the first sentence indicates: